84-1659

No. _____

Supreme Court, U.S.
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In the

Supreme Court of the United States

October Term, 1984

Mansell Twillie and
Florence Perkins ..... *Petitioners*

V.

G.B. Pouncey, Superintendent, Edward Hampton,
President of Crawfordsville School Board,
Bill Robinson, David Wallace, W. H. Green, and
James Jackson, Jr. Board Members ..... *Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

WHETHER THE COURT OF APPEALS ERRED IN HOLDING THAT THE DISTRICT COURT'S FINDINGS WERE NOT BASED ON MISTAKE OF FACT OR LAW WHEN THE EVIDENCE CLEARLY SHOWS THAT:

I.

THE PETITIONERS, MANSELL TWILLIE AND FLORENCE PERKINS WERE DEPRIVED OF THEIR PROPERTY AND LIBERTY INTERESTS WITHOUT DUE PROCESS WHEN THE RESPONDENTS DISCHARGED PETITIONERS WITHOUT PRE-TERMINATION HEARINGS, ON THE GROUNDS OF IMMORAL CONDUCT, WHICH SERIOUSLY DAMAGED THE PETITIONERS' ASSOCIATION IN THEIR COMMUNITIES AND ASSOCIATIONS.

II.

THE PETITIONERS WERE NOT GRANTED FAIR POST TERMINATION HEARINGS AFTER THEIR DISCHARGE AS REQUIRED BY THE RESPONDENTS POLICIES AND THE UNITED STATES CONSTITUTION.

III.

THE RESPONDENTS REINSTATED WHITE TEACHERS WHO WERE DISCHARGED ON CHARGES OF IMMORALITY WITHOUT PRE-TERMINATION CONFERENCES AND HEARINGS AS REQUIRED BY BOARD'S POLICIES, WHEREAS THE RESPONDENTS REFUSED TO REINSTATE PETITIONERS, WHO ARE BLACK, AND WERE DISCHARGED BY THE RESPONDENTS ON SIMILAR CHARGES WITHOUT PRE-TERMINATION CONFERENCES AND HEARINGS.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioners, Mansell Twillie and Florence Perkins respectfully pray that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Eighth Circuit, entered on January 21, 1985.

LIST OF ALL PARTIES TO THE PROCEEDING

1. Appellants

(a) Mansell Twillie
(b) Florence Perkins
(c) Wilma J. Thornton
(h) Less Doll Twillie
(i) Dorothy Woods
(j) Anna Brown

(d) Jesse Ivra

(e) Velma Smith

(f) Barbara Jones

(g) Lawrence Woods

(k) Hazel Drinkwater

(l) Earnestine Taylor

(m) Ora Harris

(n) Leurline Price

(o) Floyd Munn

2. Appellees

(A) G.B. Pouncey, Superintendent

(B) Edward Hamilton, President of Crawfordsville School Board

(C) Bill Robinson, Board Member

(D) David Wallace, Board Member

(E) W. H. Green, Board Member

(F) James Jackson, Jr., Board Member

(G) C.B. Britton, President of the Crawfordsville School Board

(H) W.J. Carlson, Board Member

(I) Robert English, Board Member

(J) Randall Johnson, Board Member

(K) Henry Valentine, Board Member

CONCISE STATEMENT OF GROUNDS FOR JURISDICTION

On January 21, 1985, The United States Court of Appeals For The Eighth Circuit entered Judgment, affirming the Judgment of the District Court for the Eastern District of Arkansas, dismissing Petitioners' Complaint with prejudice. The Date of the aforestated Appeals Court Judgment is January 21, 1985.

Jurisdictionn to review the above Judgment of the United States Court of Appeals for the Eighth Circuit is conferred upon this Court by Title 28, U.S.C. Section 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

14th Amendment:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. Amend. XIV, Section One.

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalities, taxes, licenses, and exactions of every kind, and to no other, 42 U.S.C. Section 1981.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States

or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U.S.C. Section 1983

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin. 42 U.S.C. Section 2000 e-2 (a) (1) (2).

STATEMENT OF THE CASE

The Petitioner Mansell Twillie was employed by the Crawfordsville School District, hereinafter referred to as Board, continuously from September 1960 to July 1, 1979. (T. 1566) The Board did not complain of his work nor his conduct until May 1979. In fact, he and Petitioner Perkins were notified by Respondent Pouncey that their teacher contracts for the school year 1979-1980 would be renewed. (T. 355, 356, 393) Mr. Twillie was promoted by the Board in July, 1978, to principal of the Middle School and provided incompetent secretarial personnel.

On May 21, 1979, Respondent Pouncey informed Petitioner Twillie of accusations made against him of a moral nature by four of his fellow teachers. (T. 1604) Twillie suspected that one of these accusing teachers was Brenda Frazier, whom he had given a poor evaluation. (T. 1605) He requested Mr. Pouncey to give him the names of the accusing teachers, and to permit him to read the accusations. Respondent Pouncey denied both requests. (T. 1605)

On May 23, 1979, Twillie wrote Pouncey a letter in which he: (1) challenged the credibility of the allegations against him; (2) requested a hearing; (3) demanded that his accusers be present at said hearing; and notified him that he would be represented by Attorney John Walker of Little Rock. (T. 411, 1606, 1607, 1608, 1685) On the morning of May 25, 1979, between 9:30 A.M., and 9:45 A.M., Respondent Pouncey notified Petitioner Twillie that the Board wanted to meet with him at 10:00 A.M., on that same date. (T. 566, 1607, 1685) Upon such short notice, Petitioner's Attorney, whose office is located in Little Rock, could not possibly attend because he did not have enough time to drive from Little Rock, to Crawfordsville. Appellee Pouncey was aware of this fact. (T. 411)

The Board had delegated to Respondent Pouncey authority to call special meetings of the Board at his convenience. The usual procedure Respondent Pouncey followed when he scheduled a Board Meeting for a teacher's hearing, was to

notify the teachrs in writing of the Board's Meeting which was scheduled on a certain date in the future. This procedure was not followed in this instance. (T. 413, 414)

Prior to the May 25, 1979, meeting, and prior to the May 21, 1979, meeting of Twillie and Pouncey, Respondent Pouncey met with the Board to discuss the charges against Petitioner Twillie and Perkins. Farrington Snipes, Edward Hampton, Bill Robertson, Bud Carlson, W.H. Green, Board Members, and G. B. Pouncey, Superintendent were present. Pouncey presented several unsigned statements, in which Mr. Twillie and Ms. Perkins and another teacher, Ms. Thornton, were accused of immoral conduct. The Board at that time informed Mr. Pouncey that it would not act upon these charges until they were signed by the accusers. (T. 346, 356, 563, 564, 2153).

On the morning of May 25, 1979, Respondent Pouncey called the aforestated Board Members to his office and presented them with four signed statements, in which four teachers accused Petitioners Twillie and Perkins, and Ms. Thornton of immoral conduct. Board members Snipes, Hapton, Green, Carlson, and Robertson studied and discussed the accusations, and all of them except Hampton, decided that the Petitioners and Ms. Thornton were guilty as charged, and should be terminated. All of these discussions and decision making took place prior to Petitioner Twillie's appearance before the Respondents. (T. 564, 565, 1967, 2159, 2160, 2161) Hampton did not believe the charges against the Petitioners. (T. 572) But the other Board Members not only believed the said accusation, but was so convinced of Petitioners' guilt that their mind could not change unless the accusers recanted their written statements. (T. 1966, 2171) Not even written Petitions from other teachers refuting the charges against the Petitioners would change their minds. In fact the Board gave no weight to said Petitions. (T. 1966) Respondent Robertson also relied on sources of information, other than the accusations presented at the Board meetings, to form his opinion on the guilt of the Petitioners. He refused to reveal the source of this information to the Petitioners. (T. 1968) After the Respondents form their opi-

nions as to the Petitioners' guilt, they never changed them. (T. 1969)

All Respondents readily admitted that their school policies provided that before a teacher could be terminated on the grounds of immoral conduct, he must be given notice of the charges against him and an opportunity to be heard before the Board. (T. 413, 1521, 1522, 1524, 1880, 1947, 2163, 2169) In addition to being notified of the charges and an opportunity for a hearing, Respondent Pouncey stated that the Board's policy also required that the said teacher be given three conferences and written Summaries of the conference sessions. (T. 2049, 2405) All Board members thought Mr. Pouncey had followed Board's policies before they terminated the Petitioners.

After the members of the Board had discussed and unofficially decided to terminate the Petitioners on the basis of the information presented by the Accusers, Mr. Pouncey notified Mr. Twillie between 9:30 A.M. and 9:45 A.M., to appear before the Board at 10:00 A.M. Mr. Pouncey did not tell the said Board Members that Mr. Twillie had requested them to have the accusers present at the hearing, and an opportunity to have his lawyer present. (T. 216)

When Mr. Twillie arrived at the May 25, 1979, Board meeting, he was informed in a round about manner of the charges filed against him, but were not allowed to read the written statements. (T. 568) His accusers were not present. He denied the charges. He was then told that he had two choices: "Either Resign or Be Terminated." (T. 568) The meeting was then adjourned, with no official action taken, but four of five Board Members had decided, even before Petitioner Twillie arrived, to terminate the Petitioners. These four Board Members also decided that Petitioner Perkins were guilty as charged and should be terminated. (T. 2159, 2160, 2167) Petitioners were denied due process by the Board because of their race.

On June 1, 1979, the Board met again in executive session, without notifying the Petitioner, and voted to terminate their

contracts because of the immorals charges against them. They were notified by mail of the Board's action.

Petitioner Perkins was employed by the Respondents from September 1978 to June 1, 1979. Respondents had no Complaints about her work nor conduct before May 1979. (T. 920) On May 26, 1979, the last day of school, Respondent Pouncey informed Petitioner Perkins that she had been terminated because of immorality and conduct unbecoming a teacher. She denied the charges. She then requested to see the statements of accusation, and the names of her accusers. Both requests were denied by Mr. Pouncey. (T. 930, 946) Petitioner Perkins were not even given any semblance of notice nor a hearing before she was terminated by the Board on the grounds of immorality and conduct unbecoming a teacher. She was not invited to the May 25, 1979 Board meeting nor any other Board meeting before her termination. (T. 361, 931, 2167) The Board did not follow their policies in terminating the Petitioners because the Petitioner were black.

In 1977, without following its policies of terminating teachers, the Board terminated two white teachers for immorality and conduct unbecoming teachers. At a subsequent meeting of the Board, Respondent Pouncey recommended to the Board that the white teachers be reinstated because the Board's policy on termination had not been followed. The Board accepted his recommendation and reinstated these teachers. (T. 1911, 2048, 2400) Because of race Mr. Pouncey made no such recommendation for Petitioners Twillie and Perkins. (T. 2053, 2058, 2059)

Both Petitioners requested post termination hearings and demanded that the accusers be present. The hearing was granted on June 20, 1979. But the accusers Brenda Frazier, Patsy Griffin, Margaret Lang, and Eva Keith wer not present at the hearing, although the Appellants had requested their presence. (T. 420) Before and during the hearing, Board members, Snipes, Carlson, Robertson and Green were fully confinced of the guilt of the Petitioners and could not be convinced otherwise unless the accusers recanted their statements. (T. 1864, 1882, 1966,

2159, 2161, 2162, 2167) The burden was placed upon the Petitioners to prove the termination decision was wrong. (T. 428) Ms. Griffin, one of the accusers, were a friend of Board member Robertson. (T. 1940) Board Member Robertson also based his decision in part on information from sources other than the accusations of the four accusers, which were presented to the Board. These other sources of information were not made available to the Petitioners but were kept secret from them. (T. 1967, 1968, 1969) Board member Hampton did not believe the allegations and voted against terminating the Petitioners. At the close of the Post termination hearing, the Board voted to terminate the Petitioners employment.

On August 20, 1980 Petitioners filed their Complaint pursuant to 42 U.S.C. Section 1981, 1983, and 2000 (e) et. seq., against the Respondents in the United States District Court for the Eastern District of Arkansas, alleging that they were discharged by the Appellees because of their race, and sought injunctive relief together with compensatory and punitive damages. District Court Memorandum Opinion, Appendix, p. A-9. This was the basis for Federal jurisdiction in the Court of first instance. The District Court dismissed Petitioners Complaint. District Court Judgment, Appendix, p. A-60.

The Appellants appealed to the United States Court of Appeals for the Eighth Court from the Final Judgment of the United States District Court for the Eastern District of Arkansas, pursuant to 28 U.S.C. 1291. On January 21, 1985, the United States Court of Appeals for the Eighth Circuit affirmed the District Court dismissal of Petitioners Complaint, Appendix p. A-7.

The Petitioners now appeal to the United States Supreme Court pursuant to 28 U.S.C. 1254.

CONCISE ARGUMENT AMPLIFYING REASONS FOR ALLOWANCE OF WRIT

ARGUMENT I

THE COURT OF APPEALS ERRED IN HOLDING THAT THE DISTRICT COURT'S FINDINGS WERE NOT BASED ON MISTAKE OF FACT OR LAW WHEN THE EVIDENCE CLEARLY SHOWED THAT THE PETITIONERS MANSELL TWILLIE AND FLORENCE PERKINS WERE DISCHARGED AS TEACHERS BY THE RESPONDENTS ON CHARGES OF IMMORALITY BEFORE THEY WERE GRANTED HEARINGS.

The Court of Appeals for the Eighth Circuit decided the above federal question in a way in conflict with applicable decision of the United States Supreme Court. *Goss v. Lopez,* 419 U.S. 565, 42 L.Ed.2d 725, 95 S.Ct. 729; *Wisconsin v. Constantineau,* 400 U.S. 433, 27 L.Ed.2d 515, 91 S.Ct. 507; *Armstrong v. Manzo,* 380 U.S. 545, 14 L.Ed.2d 62, 85 S.Ct. 1187; and *Board of Regents v. Roth,* 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548.

The Fourteenth Amendment's guarantee of procedural due process applies when a constitutional protected liberty or property interest is at stake. *Board of Regents v. Roth,* 408 U.S. 564, 569, 92 S.Ct. 2701, 2705, 33 L.Ed.2d 548. The Appellants interest in liberty is implicated if a charge impairs his reputation for honesty or morality. *Roth, supra,* 408 U.S. at 573, 92 S.Ct. at 2707. Procedural protection of due process apply if the accuracy of the charge is contested, there is some public disclosure of the charge and it is made in connection with the termination of employment. *Codd v. Velger,* 429 U.S. 624, 97 S.Ct. 882, 51 L.Ed.2d 92, *Wisconsin v. Constantineau,* 400 U.S. 433, 27 L.Ed.2d 515, 91 S.Ct. 507.

Applying the above principals of law to the fact of this case it is clear that the Petitioners Twillie's and Perkins' Constitu-

tional protected due process right were violated by the Respondents when the Respondents discharged them on the grounds of immorality before granting them notice of the charges, and a pretermination hearing. Mr. Twillie worked for the Board nineteen years before Respondents informed him of any complaints they had against his work or moral conduct. He was notified by Respondent Pouncey of charges of immorality and conduct unbecoming a teacher on May 21, 1979. He denied the charges, and demanded to see the written charges and the names of his accusers. He was denied both requests by Mr. Pouncey. On May 23, 1979, he requested a hearing before the board for the purposes of clearing his name; confronting his accusers, and being represented by counsel. Mr. Pouncey invited the Board members to his office on the morning of May 25, 1979, and submitted to them signed written accusations against the Petitioners, in which they were accused of immorality. The Board discussed and studied the charges. A majority of the Board members decided that the Appellants were guilty of immoral conduct and should be terminated. This all occurred prior to Mr. Twillie's appearance before the Board. On instruction of the Board during a prior meeting, Mr. Pouncey had solicited the aforestated signed accusation on the appellants from their co-workers. It was now publicly known that the Board was investigating the Petitioners. Mr. Twillie was informed by Mr. Pouncey between 9:30 A.M., and 9:45 A.M., May 25, 1979, that the Board wanted to meet with him at 10:00 A.M., that same date. Petitioner Twillie met with the Board that date, and was informed in a round about way of the charges against him. He was not furnished a written copy of the charges, nor the names of his accusers. His lawyer could not be present at the hearing because it was intentionally called by Mr. Pouncey on short notice. His accusers were not present at the hearing. At the close of the hearing, he was given a choice of resigning or being terminated.

Petitoners were unofficially discharged at the hearing on May 25, 1979, before Mr. Twillie appeared. Petitioner Perkins was not notified of the May 25, 1979 meeting; was not invited to said meeting; nor was she notified that the Respondents were

considering terminating her Contract. She was informed on May 26, 1979, by Respondent Pouncey that her contract was terminated on the grounds of immoral conduct. She denied the charges. She requested to see the written charges, and the names of her accusers. Mr. Pouncey denied both requests. Both Petitioners were terminated officially by the Board on June 1, 1979, without notice. This was in violation of Petitioners due process rights.

ARGUMENT II

THE COURT OF APPEALS ERRED IN HOLDING THAT THE DISTRICT COURT'S FINDINGS WERE NOT BASED ON MISTAKE OF FACT OR LAW WHEN THE EVIDENCE CLEARLY SHOWED THAT THE PETITIONERS MANSELL TWILLIE AND FLORENCE PERKINS WERE NOT GRANTED FAIR POST TERMINATION HEARINGS AS THE RESPONDENTS' POLICIES AND THE UNITED STATES CONSTITUTION REQUIRE.

The Court of Appeals for the Eighth Circuit decided the above federal question in a way in conflict with applicable decisions of the United States Supreme Court. *Gropp v. Wisconsin,* 400 U.S. 505, 27 L.Ed.2d 571, 91 S.Ct. 490; *Withrow v. Larkin,* 421 U.S. 35, 43 L.Ed.2d 712, 95 S.Ct. 1456; and *Peters v. Kiff,* 407 U.S. 493, 33 L.Ed.2d 83, 92 S.Ct. 2163.

A fair hearing and a fair tribunal is a basic requirement of due process. *Peters v. Kiff,* 407 U.S. 493, 33 L.Ed.2d 83, 92 S.Ct. 2163, and *Withrow v. Larkin,* 421 U.S. 35, 43 L.Ed.2d 712, 95 S.Ct. 1456. The trier of fact must base his decision upon the evidence developed at the hearing. *Groppi v. Wisconsin,* 400 U.S. 505, 27 L.Ed. 571, 91 S.Ct. 490. His decisions must be free of bias. *Withrow v. Larkin, Supra.* 723.

Applying the above principals of law to the facts of this case, it is clear that the Petitioners were not granted a fair hearing within the meaning of the due process requirements of the Fourteenth Amendment. The Board members formed their opi-

nion as to the guilt of the Petitoners on the immoral charges before they had an opportunity to be heard by the Board Members. Those opinions never changed. Only a recanting by the accusers of their charges against the Petitoners could change the Board Members Opinions. Board Members also based their opinion on evidence which were not submitted at either hearings. The Board Members required the Petitioners to prove their termination decision was wrong. The Board Members did not have the accusers present at the hearing.

Petitioners were not provided fair hearings as required by the Fourteenth Amendment to the United States Constitution.

ARGUMENT III

THE COURT OF APPEALS ERRED IN HOLDING THAT THE DISTRICT COURT'S FINDINGS WERE NOT BASED ON MISTAKE OF FACT OR LAW WHEN THE EVIDENCE CLEARLY SHOWED THAT THE RESPONDENTS REINSTATED WHITE TEACHERS WHO WERE DISCHARGED ON CHARGES OF IMMORALITY WITHOUT PRE-TERMINATION CONFERENCES AND HEARINGS AS REQUIRED BY BOARD POLICIES WHEREAS THE RESPONDENTS REFUSED TO REINSTATE PETITIONERS, WHO ARE BLACK AND WERE DISCHARGED BY THE BOARD ON SIMILAR CHARGES WITHOUT PRE-TERMINATION CONFERENCES AND HEARINGS.

The Court of Appeals for the Eighth Circuit decided the above federal question in a way in conflict with applicable decisions of the United States Supreme Court. *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 49 L.Ed.2d 493, 96 S.Ct. 2574. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 36 L.Ed.2d 668, 93 S.Ct. 1817.

Federal law prohibits the discharge of any person because of his race. 42 U.S.C. Section 2000 e-2 (a) (1); 42 U.S.C. Section 1981, Employers cannot use former employees' conduct as a

pre-text for discrimination. They may justifiably refuse to rehire employees who engage in immoral and unlawful conduct, but only if this criterion is applied alike to members of all races. *McDonnell Douglas Corp v. Green,* 411 U.S. 792, 36 L.Ed.2d 668, 93 S.Ct. 1817. They cannot retain guilty employees of one color while discharging those of another color. *McDonald v. Santa Fe Trail Transp. Co.,* 427 U.S. 273, 49 L.Ed.2d 493, 96 S.Ct. 2574.

Applying the above principals of law to the facts of this case, it is clear that the Petitioners were not reinstated by the Respondents because of their race. Twillie filed his E.E.O.C. Complaint timely. Following are quotations from the District Court Transcript of Respondent Pouncey's testimony under cross-examination.

Q. All right.

"Mr. Tyler met with the Board and stated his reasons for not recommending Ms. Atkins for re-employment for another year: One; inability to control her Class; Two; excessive absenteeism; Three; developing a relationship with students that is not professional in nature. Mr. Tyler's reasons for not recommending Ms. Kechl for re-employment are: One . . . well, Kechl does not relate here. But these are the only reasons that Mr. Tyler gave. Where are the racial reasons set forth in the minutes.

A. He said relationship with—

Q. But did you recall Mr. Tyler's testimony in Court?

A. Not with regard to that, I don't.

Q. Do you recall Mr. Tyler suggesting or saying that the teachers—these two teachers—had been accused of having a meretricious relationship with the students.

A. I don't remember. (T. 2040, 2041)

Q. Now you told the School Board that, somehow or another, you all had not followed the right procedure in terminating these two teachers didn't you?

A. I did at that—yes.

Q. Well, what procedure did you all not follow?

A. Of offering the teachers a hearing, and so forth.

Q. Well, wait a minute. If they weren't terminated by the board—now that's what I want to understand—how could procedure have been violated if they were not offered a hearing?

A. They were terminated by the board—what you were speaking of there.

Q. Well, now there is no evidence—.

A. Atkins and Keihl was terminated.

Q. Well, we're talking about Atkins and Bridgewater.

A. Well, the other one was not terminated, she was not terminated.

Q. All right, now go back to 147, and it is stated here that, due to the fact that policy procedures were not followed by having conferences with these two teachers and giving the teachers a copy of the conferences, a motion was made by W.J. Carlson to reinstate Ms. Atkins.

Is that what it was?

A. If that's what the minutes says, yes. (T. 2048, 2049)

Q. My point is: Did you give Mr. Twillie, Ms. Thornton, and Ms. Perkins two conferences before you took the matter to the School Board?

A. Most of this happened the last ten days of school.

Q. All right. Now did you give them written statements about the conferences at any time.

A. I talked to Mr. Twillie—several conferences with him.

Q. Listen to my question. Here you said that you didn't follow your policy because you had not given these teachers a copy of the conferences. Now did you ever, before giving these teachers notice of termination, ever give them a copy of the conference they had with you—whatever that means?

A. No.

Q. All right, well, why would you do it for the white teachers and not for the black.

A. The race had no bearing on it. (T. 2052, 2053)

Following are quotations from District Court Transcript of Board Members W. J. Carlson's testimony under cross-examination:

A. Mr. Pouncey brought to the Board that we had not given these teachers the proper hearing and that he recommended that we rehire them and we rehire them and we voted.

Q. That was only after those teachers complained and told you all that they had not a fair hearing, right?

A. They complained to Mr. Pouncey, yes, sir.

Q. All right, and that was before you all made the decision to terminate them, right, or was that after.

A. I believe we had made the decision to terminate them, and then after Mr. Pouncey informed us we hadn't carried out the proper procedure he recommended rehiring them to keep from, you know, having any

further problem, and that was—he recommended that and that was it.

Q. Now, that was—the Complainants in that case were all white, weren't they? The students involved were white, weren't they?

A. I remember the teachers were white. Now, I don't remember the Complaints. (T. 1910, 1911)

It is clear that the two white teachers were discharged for immoral reasons just as the Petitioners, who are black, were. All parties were not given hearings and conferences before their termination as the Board policies provided. The white teachers were reinstated, but the black Petitioners were not. Petitioners were denied reinstatement because of their race. This was in violation of 42 U.S.C. Section 2000 e-2 (a) (1) and 42 U.S.C. Section 1981.

CONCLUSION

Petitioner respectfully submit for reasons hereinabove set out, that a Writ of Certiorari be issued to review the Judgment of the United States Court of Appeals for the Eighth Circuit. The above important questions of Federal Law should be settled by this Court.

Respectfully Submitted,

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Attorney for Petitioners
Mansell Twillie and Florence Perkins

CERTIFICATF OF SERVICE

I, Samuel Turner, Jr. Attorney for Mansell Twillie and Florence Perkins, Petitioners state that I have served a copy of the foregoing Writ of Certiorari on the Attorney of Record by depositing copies thereof, postage prepaid in the United States Mail and addressed as follows: Mr. Robert V. Light, Attorney at Law, Friday, Eldredge and Clark, 2000 First National Building, Little Rock, AR 72201; Mr. John W. Walker, P.A., 1723 Broadway, Little Rock, AR 72201; Ms. Benita Terry Jones, 11450 Audelia, #398, Dallas, Texas 75243.

All parties required to be served have been served this 17th day of April, 1985.

Samuel Turner Jr

/s/ Samuel Turner, Jr.

SAMUEL TURNER, JR.

APPENDIX

No. _____

October Term, 1984

Mansell Twillie and
Florence Perkins ..... *Petitioners*

V.

G.B. Pouncey, Superintendent, Edward Hampton,
President of Crawfordsville School Board,
Bill Robinson, David Wallace, W. H. Green, and
James Jackson, Jr. Board Members ..... *Respondents*

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

APPENDIX

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Attorney for Petitioners
Mansell Twillie and Florence Perkins

No. _____

October Term, 1984

Mansell Twillie and
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V.

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PETITION FOR WRIT OF CERTIORARI
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FOR THE EIGHTH CIRCUIT

APPENDIX

United States Court of Appeals
For the Eighth Circuit

No. 83-2517

Jessee Ivra, Velma Smith, *
Barbara Jones, Lawrence Woods, *
Less Doll Twillie, Dorothy *
Woods, Anna Brown, Hazel A. *
Drinkwater, Earnestine Taylor, *
Ora Harris, Mansell Twillie, *
and Leurlene Price, *
*

Appellants,

V.

C. B. Britton, President of the Crawfordsville School Board, W. J. Carlson, Robert English, Randall Johnson, and Henry Valentine, Board Members, and G. B. Pouncey,

Appellees.

Appeal from the United States District Court for the Eastern District of Arkansas.

* * * *

Floyd Munn,

Appellant,

V.

C. B. Britton, President of the Crawfordsville School Board, W. J. Carlson, Robert English, Randall Johnson, and Henry Valentine, Board Members, and G. B. Pouncey,

Appellees.

* * * *

Mansell Twillie, Wilma J. Thornton, and Florence Perkins,

Appellants,

V.

G. B. Pouncey, Superintendent, Edward Hampton, President of the Crawfordsville School Board, Bill Robinson, David Wallace, W. H. Green, and James Jackson, Jr., Board Members,

Appellees.

No. 83-2518

Less Doll Twillie and Dorothy A. Bass,

Appellants,

Dewitt D. Martin,

V.

Crawfordsville, Arkansas School District No. 2, Farrington B. Snipes, Jr., President of Board of Directors, W. J. Carlson, Edward Hampton, W. D. Robertson, each in their individual capacity and as members of the Board of Directors of the Crawfordsville Independent School District No. 2, G. B. Pouncey, Superintendent, in his individual capacity and as Superintendent of Schools of Crawfordsville Independent School District No. 2,

Appeal from the United States District Court for the Eastern District of Arkansas.

Appellees. *

No. 83-2644

Less Doll Twillie, Dorothy A. Bass, and Dewitt D. Martin, *

Appellees, *

V. *

Crawfordsville, Arkansas School District No. 2, Farrington B. Snipes, Jr., President of Board of Directors, W. J. Carlson, Edward Hampton, W. D. Robertson, each in their individual capacity and as members of the Board of Directors of the Crawfordsville Independent School District No. 2, G. B. Pouncey, Superintendent, in his individual capacity and as Superintendent of Schools of Crawfordsville Independent School District No. 2, * Appeal from the United States District Court for the Eastern District of Arkansas.

Appellants. *

No. 83-2660

Less Doll Twillie and Dorothy A. Bass, *

Dewitt D. Martin,	*	
	*	
Appellant,	*	Appeal from the United
	*	States District Court
V.	*	for the Eastern
	*	District of Arkansas.
Crawfordsville, Arkansas	*	
School District No. 2,	*	
[illegible]ington B. Snipes, Jr.,	*	
[illegible]sident of Board of	*	
Directors, W. J. Carlson,	*	
Edward Hampton, W. D.	*	
Robertson, each in their	*	
individual capacity and as	*	
members of the Board of	*	
Directors of the Crawfordsville	*	
Independent School District	*	
No. 2, G. B. Pouncey, Super-	*	
intendent, in his individual	*	
capacity and as Superintendent	*	
of Schools of Crawfordsville	*	
Independent School District	*	
No. 2,	*	
	*	
Appellees.	*	

Submitted: September 10, 1984
Filed: January 21, 1985

Before BRIGHT, JOHN R. GIBSON, and FAGG, Circuit Judges.

PER CURIAM.

Appellants in these consolidated cases are present and former black employees of the Crawfordsville, Arkansas School District.

They appeal from the district court's[1] adverse rulings in employment discrimination actions filed under 42 U.S.C. §§1981 and 1983.

In the first of these lawsuits filed in 1974 (*Ivra, et al.*), twelve plaintiffs asserted a variety of allegations of discriminatory treatment in the terms and conditions of employment in the Crawfordsville School District. On Octobet 5, 1983, the district court issued a comprehensive opinion ruling against plaintiffs on all claims and dismissing the complaint. We have carefully reviewed the record and, finding no mistake of fact or law, affirm the dismissal on the basis of the district court's memorandum opinion.

Less Doll Twillie, Dorothy Bass, and Dewitt Martin filed a third suit[2] in 1978, alleging that the school district did not renew their 1977-78 teaching contracts because of their race. Defendants asserted that the non-renewals rested upon declining enrollment, and that the school district made these decisions in accordance with its reduction in force policy. In findings of fact and conclusions of law announced from the bench in August 1983, the district court determined that the initial termination decisions were not based on improper racial considerations. The court found, however, that race was a factor in the school district's failure to follow its policy of giving terminated teachers preferential consideration in rehiring, and that, but for their race, plaintiffs would have been offered reinstatement when appropriate positions became available. Ruling on a related pendant state claim, the trial judge further concluded that because the school district had violated its own policy regarding rehire after a reduction in force, plaintiffs had made a case under Arkansas law, and were entitled to reinstatement to fill the next vacancies for which they were qualified. The district court also awarded some backpay to Bass and Martin, but denied backpay to Twillie because she had returned to graduate

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[1]The Honorable G. Thomas Eisele, Chief United States District Judge for the Eastern District of Arkansas.

[2]A second lawsuit, filed by Floyd Munn, has not been appealed.

school full-time after her termination, and had thus taken herself out of the job market.

On appeal, Twillie, Bass, and Martin challenge the court's failure to find that the district court did not renew their contracts because of their race, and allege various errors in the scope of the relief granted. Defendants cross-appeal, alleging error in the district court's finding of unlawful discrimination and in the scope of the backpay award. In addition, cross-appellants contend that the trial court did not squarely rule on the defense of qualified immunity asserted by the individual defendants, and that the court should have directed dismissal as to defendants in their individual capacities. After examining the record and considering the argument of the parties on appeal, we conclude that the judgment of the district court should be affirmed. However, we remand this case to the district court for the limited purpose of clarifying whether the monetary awards were assessed against the named defendants in their individual capacities as well as in their official capacities.[3]

Appellants Mansell Twillie, Wilma Thornton, and Florence Perkins filed the fourth lawsuit in 1980, alleging that the school district did not renew their employment contracts in 1979 because of their race. The school district claimed it terminated them for "serious unprofessional and immoral conduct." In a separate opinion issued on October 5, 1983, the district court provided a comprehensive discussion of the issues and evidence in the case, and concluded that plaintiffs had failed to establish that defendants had discriminated against them on the basis of race. The district court further determined that defendants' decision to terminate plaintiffs was not arbitrary or capricious, but was made in good faith and in substantial compliance with the law and the school district's own policies. Finding no error of fact or law, we affirm on the basis of the district court's thoughtful and thorough memorandum opinion.

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[3]Should the district court determine that the money judgment applies to the named defendants in their individual capacities, and should the defendants wish to challenge that ruling, we will expedite an appeal on that issue.

Accordingly, the judgment of the district court in each of these cases is affirmed, subject to our limited order of remand in the 1978 lawsuit. *See* 8th Cir. R. 14.

A true copy.

ATTEST:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION
(Filed Oct. 5, 1983)

Mansell Twillie, Wilma J. Thornton and Florence Perkins — Plaintiffs

V. — No. J-C-80-175
With Consolidated Cases
(Nos. J-C-74-60, J-C-77-126, and J-C-78-105)

G. B. Pouncey, Superintendent, Edward Hampton, President of the Crawfordsville School Board, et al. — Defendants

MEMORANDUM OPINION

Mr. Mansell Twillie, Ms. Wilma J. Thornton and Ms. Florence Perkins filed their complaint herein on August 20, 1980, naming as defendants Mr. G. B. Pouncey, the Superintendent of the Crawfordsville School District, Mr. Edward Hampton, President of the Crawfordsville School Board and Messrs. Bill Robinson, David Wallace, W. H. Green and James Jackson, Jr., Board members of said school district.[1]

[1]On March 10, 1982, an order was entered permitting the amendment of the complaint to include new Board members in the four consolidated cases. Mr. W. D. Robertson was one of those named. Apparently the name "Bill Robinson" in the original complaint was in error.

The complaint states that it is brought pursuant to 42 U.S.C. §§ 1981, 1983 and 2000(e), *et seq.* It is alleged that Mr. Twillie filed a timely charge of racial discrimination with the E.E.O.C. on January 4, 1980, naming "Crawfordsville, Arkansas School District #2" as the entity that discriminated against him. In the E.E.O.C. charge Mr. Twillie stated that he was fired on or about July 3, 1979, "as a result of being subject to unfair terms and conditions of employment and being a party to class action suit (J-74-C-60) against the Respondent. "*See* Pl. Exh. 70. He also stated in that charge that he believed he was fired and subjected to unfair terms and conditions "because of his race, black, and being a party to a class action suit (J-74-C-60) . . . in that:

a. During the school term 1978-79, I was promoted to the position of Principal of the Crawfordsville Middle School. After being selected for the position, I immediately asked for a confrontation with the School Board to discuss or negotiate terms of the contract, etc. I was denied a conference and instructed by the President of the School Board to work directly with G. B. Pouncey (C) Superintendent. Caucasian (Don Montgomery and FNU Heath) applicants were allowed to have two or more conferences with the School Board.

b. G. B. Pouncey (C) Superintendent assured me that the Title I Aide could remain as secretary. After six weeks of hard work and getting the school operating smoothly, Mr. Pouncey then decided that Ms. Thornton, the Title I Aide, could not remain as secretary and that Mrs. Griffith, the former secretary would return. I flatly refused to have an incompetent person after working so hard to get things operating in the manner that was conducive to the students as well as the staff. I ____[sic] a lady (B) who after six weeks training showed no secretarial abilities, initiative nor cooperation.

c. I learned through Mrs. Patsy Griffith (C) that I was placed in the position of Principal of the

Crawforesville Middle School for the purpose of being discharged and that was the reason why I was not given efficient help. Without a qualified secretary, my work would appear sloppy, reports would be late, and I virtually would not be able to do a good job.

d. The fabricated documents attesting to my lack of professional ability and inciting immoral acts were never discussed with me prior to my being discharged, nor did G. B. Pouncey (C) Superintendent, discuss with me at any time that such information or documents were presented to him.

e. G. B. Pouncey, Supreintendent, told me during July 1978, the reason I had not been promoted sooner is because I was a party to a lawsuit (J-74-C-60) against the Respondent.

f. There are only two (2) Blacks still employed by the Respondent, who filed the class action lawsuit (J-74-C-60). The other eight (8) blacks have been fired or forced to resign.

I believe that the Respondent has and continues to discriminate against blacks in regard to hiring, firing, promotion, wages, and other terms and conditions of employment.

In his complaint plaintiff Twillie further alleged that he "was assigned the principalship of the Crawfordsville Middle School in July 1978, for the 1978-79 school term and that he was the first black from within the system to be assigned a principalship." Said plaintiff asserts that Mr. Pouncey, the Superintendent "was intent upon promoting plaintiff . . . so that he could fire him in retaliation for plaintiff's leadership against the district's race policies." To accomplish this it is alleged that Mr. Pouncey "orchestrated a scheme designed to injury plaintiff's reputation" by encouraging employees of the District to fabricate and embellish rumors suggesting immorality by plaintiff Twillie with plaintiffs Perkins and Thornton. It is alleged that the reason given for plaintiff

Twillie's termination was untrue and the defendant Board members accepted Mr. Pouncey's recommendations to terminate the three plaintiffs. It is alleged that Mr. Pouncey's actions were in retaliation against plaintiff Twillie for filing civil action No. J-74-C-60 in 1974. Finally plaintiffs allege that defendants have never treated white staff in the manner they have treated plaintiffs.

Plaintiffs ask for injunctive relief together with compensatory and punitive damages.

The defendants admit that plaintiff Twillie was made principal of the Middle School for the 1978-79 school year and that an administrative hearing was held on June 20, 1979, following which, " . . . the Board confirmed the non-renewal of plaintiffs' employment contracts. The defendants essentially deny the remaining allegations of the Complaint and further state that " . . . plaintiffs' employment contracts . . . were not renewed for lawful reasons and that no procedural or substantive right of any plaintiff was violated . . . ."

Plaintiffs' Pre-Trial Conference Information Sheet covering the four consolidated cases has this to say about the 1980 case:

> The defendants, praticularly G. B. Pouncey, Superintendent, have intentionally, maliciously, and in retaliation against Manzell Twillie for filing the 1974 lawsuit as a class action, orchestrated a scheme designed to injury plaintiffs' reputation and standard in the community, particularly Twillie, Thornton and Perkins. Plaintiffs Perkins, Thornton and Manzell Twillie allege that they were intentionally and maliciously mistreated by defendants, particularly C. B. Pouncey, by being terminated due to their race.
>
> * * *
>
> Plaintiff Manzell Twillie was subsequently terminated by the defendants for retalization against him because of

> race because of his filing of the original [1974] lawsuit against the defendants.

The "Trial Brief of Defendants" refers to the 1980 suit as follows:

> The three plaintiffs allege that non-renewal of their contracts of employment at the end of the 1978-79 school year was discriminatory because they are black and seek injunctive and monetary relief pursuant to 42 U.S.C. § 1981 and § 1983. Plaintiff Twillie filed a complaint with the E.E.O.C. and therefore also prosecutes his claim under Title VII. The defendants are Board members Hampton, Robertson, Wallace, Green and Jackson, and Superintendent Pouncey.

The defendants also pointed out that Mr. Twillie's E.E.O.C. complaint named the Crawfordsville School District as the sole respondent. Since the 1980 suit named only the Board Members and Mr. Pouncey as defendants—and did not name the school district—defendants contend that Mr. Twillie is not entitled to prosecute this case as a Title VII action. (The other two plaintiffs in the 1980 action, Ms. Thornton and Ms. Perkins, have not attempted to qualify their claims under Title VII.) The Court disposed of this issue at the commencement of the case. It rejected defendants' argument relying upon the reasoning in *Henry v. Watson Chapel,* No. PB-C-80-161, Memorandum and Order of August 4, 1982, pp. 6-12.

As noted one of the plaintiffs here, Mr. Twillie, was also a plaintiff in the 1974 lawsuit. By the time of the trial there were twelve plaintiffs seeking individual relief in that action. The Court has found and concluded that none of the plaintiffs in that action was entitled to any relief. Those claims have therefore been dismissed. The findings and conclusions in that case are incorporated herein by reference because of the plaintiff Twillie's contentions here that his participation in that lawsuit was one of the reasons for his termination in 1979. The 1980 Complaint did not purport to specify any new and additional acts of employment discrimination against the plaintiff Mansell Twillie subsequent to the

filing of the 1974 action and prior to the filing of the 1980 Complaint except with respect to his promotion to the principalship of the Middle School in 1978 and subsequent termination in 1979.

The 1974 suit was essentially a "non-case." It was not pursued aggressively by the plaintiffs and the defendants do not appear to have ever considered it a serious threat. After hearing all of the evidence in connection therewith the Court can understand the attitude of both sides since there was no substantial merit in any of the clailms asserted. It is interesting to note that Mrs. Twillie, wife of the plaintiff Mansell Twillie, while vigorously pursuing her 1978 lawsuit, practically ignored her role as a plaintiff in the 1974 suit during her testimony. So, although it is important to review Mr. Twillie's 18-year work history with the District, it turns out, as a factual matter, that little of that history is germane to the reasons for his termination in 1979.

The Court finds and concludes that Mr. Twillie's participation in the 1974 lawsuit had nothing to do with his termination in 1979. In fact that lawsuit does not appear to have negatively affected the careers of any of the participants therein. And, of course, as has been pointed out, neither Ms. Perkins nor Ms. Thornton was a party to any suit other than the 1980 suit.

It is and has been the position of the defendants that the three plaintiffs in this 1980 suit were terminated for serious unprofessional and immoral conduct. The plaintiffs contend that such reasons were pretextual and that they were really dismissed because of their race. (Plaintiff Twillie also contended that it was because of his participation in the 1974 suit. As to this contention see discussion, *supra.)*

Before dealing precisely with the issues before the Court some general impressions are necessary. Not only is the defendant school district very small and very poor, it has had its difficulty developing any feeling of cohesiveness or local pride among its teachers and administrators. Being located so close to Memphis and West Memphis the basic orientation of many

teachers and staff has been outward, i.e., toward interests and opportunities outside the district. Indeed many employees of the district actually live in Memphis. The turnover rate has been high and the problems many. The politics of race and personality has been evident, and perhaps inevitable, since the early seventies, following the complete integration of the system. In a district in which it appears that the numbers of blacks and whites of voting age are approximately equal, the paramount school district issues have not always had as their central focus the educational needs of the students served by the district. Nevertheless, this district, like most, has many dedicated staff and teachers who must lament the devisiveness, the cliques (based more on personality than race), and the lack of common educational objectives, and who take serious issue with the attitude (reflected in the actions of some) that the school system exists principally for the benefit of its paid employees.

Since integration in 1970 the total student population has fallen from approximately 1200 to approximately 700 in 1983. The ratio of black to white students has risen from 86.3% in 1970, *See* Judge Henley's Order in *United States v. Crawfordsville School District,* No. J-66-C-38, Slip Op. at 1 (E.D. Ark., Jan. 12, 1970), to 90% in 1983. The Court does not have before it the figures reflecting demographic changes in the adult population of the school district over that 13 year period, but it is safe to say that changes therein, even though probably significant because of changing economic conditions, would not entirely explain the significant drops in student populations (obviously both black and white) reflected above.

Some blacks perceive the possible abandonment of white support for the public schools. Indeed, some of the duly elected white members of the School Board have chosen to send their own children to parochial, or other, private schools. Some of the whites, on the other hand, perceive that the blacks want to take over the schools and fear that at those times when blacks are in control of the Board, personnel and fiscal decisions will be based upon race rather than merit, economic realities will be ignored, and educational values will be sacrificed. So there has

been a certain amount of racial polarization, and, at the extremes, a lack of acceptance of the goal and the value of public integrated education. Still the Court senses that the majority of the employees and partons of the district maintain their faith in the public school system and want to see it work fairly, effectively, professionally, and constitutionally.

Before the factual issues developed which gave rise to this 1980 lawsuit, three other lawsuits had already been filed: (1) the 1974 lawsuit in which both Mr. and Mrs. Twillie were among the plaintiffs; (2) the 1977 suit by Mr. Floyd Munn; and (3) the 1978 lawsuit by Mrs. Twillie, Ms. Dorothy Bass and Mr. DeWitt Martin. These lawsuits had become a sort of background to the daily operation of the schools. Both the appropriate use and the inappropriate abuse of judicial process are illustrated in the mixture. The Court has already ruled in favor of the plaintiffs in the 1978 suit. Mr. Munn can only be seen as a professional litigant. His case was utterly without merit. Suffice it to say that a confrontational, litigation-conscious atmosphere is evident throughout, which helps explain many of the actions and responses of the participants.

When Mrs. Twillie was not offered a new position after her non-renewal in May of 1978, she went off to Jonesboro to continue her education at Arkansas State University (ASU). She, along with Ms. Bass and Mr. Martin, then filed their separate lawsuit on September 5, 1978. Mr. Twillie continued his career with the Crawfordsville District.

Mr. Mansell Twillie had expressed an interest in some administrative position several times. On June 12, 1978, about one month after his wife's contract had not been renewed, he wrote the president of the School Board requesting consideration for such a position for the 1978-79 school year. He pointed out that he had worked in the district for eighteen years, had a masters degree and some fifteen hours in administration. Recognizing that he did not then possess the requisite certification he stated, "I am willing to further my studies in the field of administration." P. Exh. 27. A few days later Mr. Pouncey called him at

his home and asked him to come in to his office. At their meeting Mr. Pouncey informed him that he had talked to the people in the State Department of Education to see if he might be conditionally accepted if the Board chose to appoint him as a principal of the newly proposed "Middle School." Mr. Pouncey told him that if the Board accepted the reorganization plan (which would result in the creation of a new Middle School) he would recommend Mr. Twillie for the position upon the condition that Mr. Twillie would commit himself, as part of the agreement, to go to summer school in 1979 to complete his qualifications for certification in accordance with the requirement of the State Department of Education. Mr. Twillie expressed his interest and agreement. That night the reorganization plan was approved and the Board appointed Mr. Twillie principal of the Middle School in mid-June 1978.

Mr. Twillie's immediate reaction to this development can only be described as curious. As he later stated in his E.E.O.C. charge, "I immediately asked for a confrontation with the School Board to discuss or negotiate terms of the contract, etc." Pl. Exh. 70. More specifically he wrote to the Board on June 22, 1978, insisting that he had a right to a conference with the Board to discuss his salary, his contract and his duties. *See* Pl. Exh. 65. Just prior to his promotion Mr. Twillie was being paid at the rate of $12,075.00 per year. Mr. Pouncey and the Board after checking with other comparable school districts set his salary for this completely new position at $15,000.00. In this letter Mr. Twillie stated he would accept "$16,000.00 up" and sought, among other things, a three-year contract. He stated, "I can do a better job if I do not have to worry whether or not my job will be terminated the next year or if this is a means of pushing me out of the system." Whether the last comment evidences only some mild paranoia of whether it might be interpreted, in the light of subsequent developments, as an indication of some contemplated scenario in which Mr. Twillie would soon be leaving the district under strong protest of mistreatment can better be reflected upon after a review of all of the evidence. In any event it is clear that he did not first get this idea from Mrs. Patsy Griffith as suggested in paragraph "e" of his

E.E.O.C. charge, Pl. Exh. 70, since Ms. Griffith did not work for him until later in the summer.

In passing the Court notes that there is no disparity or, indeed, comparability in the salary paid to Mr. Twillie and that paid to Dr. Montgomery who was elementary principal *and* the assistant superintendent, had a Ph.D. degree, and was hired into the district with the idea that he would later replace Mr. Pouncey as superintendent.

The Board, in effect, referred Mr. Twillie back to the Superintendent, Mr. Pouncey, to discuss any problems he might have concerning his salary, his contract or his duties. In this respect the Board was following its usual personnel procedures. The Court finds and concludes that, although the Board had some misgivings in the past about Mr. Twillie's qualifications to serve in another administrative position, *see* Def. Exh. 19, it concluded in June of 1978 that he was the best choice for the position of principal in the Middle School. Both Mr. Pouncey and the Board went out of their way to get some sanction for this appointment from the State Department of Education. The appointment was made in good faith with the expectation that, if Mr. Twillie completed his certification requirements, he would continue to serve in this important position in the future.

When Mr. Twillie began preparing for the 1978-79 school year Mrs. Patsy Griffith, a white female who served as an assistant librarian, was designated to assist him as a secretary. However, she soon required surgery and was unavailable for about six or seven weeks. It was at this point that Ms. Thornton was chosen to perform such duties. She did so until September when Ms. Frazier was designated to fill this position at which time Ms. Thornton was to devote most of her time to her position as a teacher's aide helping Ms. Bullard and Ms. Fields. Ms. Perkins was a fifth grade teacher in the Middle School at the time.

We now turn to the sequence of events leading up to the Board's decision not to renew the contracts of Mr. Twillie, Ms. Thornton and Mr. Perkins.

The first complaints received by Mr. Pouncey consisted of anonymous telephone calls by persons who identified themselves as parents of children in Ms. Perkins class. The basic complaint was that Ms. Perkins would leave her class unattended. Next he received information from a teacher that Ms. Perkins was spending a great deal of time with Mr. Twillie in the lounge or his office. Mr. Pouncey first talked to Mr. Twillie about such complaints in February of 1979. He counseled Mr. Twillie not to show favoritism to any of his teachers by granting special privileges or prerogatives. Mr. Twillie acknowledged such a conversation in his own testimony. The Court specifically finds that Mr. Pouncey received telephone calls from persons whom he honestly believed to be parents of both black and white students in Ms. Perkins' class complaining about her staying out of, and neglecting, her classes. And he also received complaints from teachers, the first before Christmas of 1978, stating that Ms. Perkins was spending her time with Mr. Twillie and that her students were arriving late to their next classes. They also complained that Mr. Twillie was giving Ms. Perkins preferential committee, and other, assignments. And the Court finds that Mr. Pouncey discussed these complaints with Mr. Twillie in February of 1979 in an effort to help him avoid such problems in the future. Mr. Pouncey's memorandum of February 15, 1979, speaks to this as follows:

> 3. I also discussed his relationship with a teacher, Mrs. Perkins. I have had calls to the effect that she was staying out of her classroom to talk to him in the lounge and also that he had assigned her to be head of more clubs or activities than any other teacher. Mr. Twillie denied knowing anything about any of this and seemed to be hurt over all of it.
>
> I informed him the danger of showing any favoritism to anyone teacher, and he said that he would be more careful.

The Court also finds that after the February meeting Mr. Pouncey began receiving much more serious statements about Mr. Twillie's conduct. The charges were initiated by others (*see* below) and were serious enough so that, if true, mere counseling or further conferring would not be the appropriate response in Mr. Pouncey's judgment. The Court specifically finds that Mr. Pouncey did not attempt to "set up" Mr. Twillie or to fabricate falsehoods against him in order to get rid of him as alleged by the plaintiffs. Mr. Pouncey and Mr. Twillie may not have been good friends. Indeed, they may have been antagonists with respect to certain school issues, but they had worked together professionally for almost twenty years in a relationship that might be characterized as something better than mere co-existence. But Mr. Pouncey had strong fundamental feelings about morality, particularly sexual morality, among staff and teachers within the school environment. When he first received oral reports of gross improprieties on the part of these three plaintiffs from teachers whom he respected (Note: Mr. Pouncey knew all of those teachers well, except Ms. Frazier.), the Court infers that he probably emphasized to those making such reports that no action could be taken on the basis of un-documented rumors and that he therefore suggested that more detailed written records concerning the facts be maintained. He had a previous experience in which he felt the Board had over-responded to mere rumors of improprieties and had to back off when faced with possible litigation expense. *See infra.* He was gun-shy and recognized that those complaining would have to provide strong concrete evidence before any action could be considered. In any event it is clear that at some point he required those bearing such information to commit same to writing and, then still later, at the direction of the Board, he required such statements to be signed. Since some of the statements were dated in April it appears that such requests by Mr. Pouncey were first made in March or early April.

The key evidence against Mr. Twillie, Ms. Thornton and Ms. Perkins came from two white and two black employees: Ms. Griffith, Mrs. Keith, Ms. Lang and Ms. Frazier.

The first time these really serious allegations were brought to Mr. Twillie's attention by the school administration was on May 21, 1979. On that date Mr. Pouncey called Mr. Twillie to his office, asked him to close the door, and then said something like, "Your're in a heap of trouble" and told him that four of his teachers had made written charges about his improper conduct with a teacher and a secretary. Mr. Twillie denied all charges and stated he felt some people were trying to get him out of the school system. Mr. Pouncey stated that it would be necessary to look into the situation, and Mr. Twillie requested the opportunity to meet with the Board. Pl. Exh. 21.[2] On May 22, 1979, Mr. Twillie wrote Mr. Pouncey referring to the previous conference, "at which time you cited defamatory allegations being made by teachers or other personnel on my staff." He asked that "written proof (in the original form) be produced." He challenged the allegations, asked for confrontation with the accusers, and stated that he would be represented by his attorney, Mr. Walker, at the hearing, Pl. Exh. 23. On May 23, 1979, Mr. Twillie wrote the Board noting that, "It has been reported that teachers on my staff have documented information concerning lewd acts of conduct displayed by me and another staff member." He advised the Board that he had had a conversation with each individual faculty member and "each agrees that none of this alleged action had been shown." He concluded by stating, "If such documented information exists, I feel it is a deceitful ploy to subject me to ridicule in retaliation of some misgivings he/she feels toward me." Pl. Exh. 68.

In his testimony Mr. Twillie stated that during his conversation with Mr. Pouncey on May 21, 1979, he suspected Ms. Frazier might be the source of such derogatory information. He stated that when he returned to his office and called in the in-

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[2]The theory of the plaintiffs that Mr. Pouncey and the Board were engaged in some plot or conspiracy to get rid of Mr. Twillie is further negated by the circumstance that the said defendants carefully recorded each denial made by Mr. Twillie in private conferences with them when it would have been easy—if they were embarked upon such a plan of sinister deception—to simply report that Mr. Twillie had admitted to them the truth of their allegations.

dividual teachers, Margaret Lang acknowledged, "sure enough," she had made such a report. So Mr. Twillie's May 23, 1979, letter to the Board was not entirely accurate. He also testified that Ms. Frazier admitted making charges against Mr. Tyler but denied making such charges against him. This is interesting in the light of Ms. Frazier's testimony on the last day of the trial. *See infra.*

Next followed a special Board meeting on May 25, 1979, in accordance with Mr. Twillie's oral request of May 21 to Mr. Pouncey. The minutes of that meeting are succinct:

> Mr. Mansell Twillie, Middle School Principal, met with the board to discuss the allegations that some of his staff in the Middle School had presented to the Superintendent in regard to his relationship with a teacher, Mrs. Florence Perkins, and an aide, Miss Wilma Thornton. Mr. Twillie discussed the allegations with the board and denied all of them. No action was taken by the board.

According to Mr. Twillie's testimony Mr. Edward Hampton, a black member of the Board, spoke first, informing him of the serious allegations involving morals charges made by four teachers. The Court finds that the charges were summarized and discussed and Mr. Twillie was asked if they were true. He replied, "No." Mr. W. H. Green indicated that if the charges were true Mr. Twillie had two alternatives: resign or be fired outright. Mr. Twillie protested that he was innocent and could not resign. Mr. Robertson then said there would be no action taken at that time.

On June 1, 1979, the Board met again and, having before them the signed statements of the witnesses and Mr. Pouncey's review of his investigation, voted *unanimously* not to renew the contracts of Mr. Twillie, Ms. Thornton or Ms. Perkins. The minutes of that meeting read as follows:

> A called meeting of the Board was held at 11:30 A.M. in the Superintendent's office. The Board met to discuss and to take action on the allegations that had been given to the

> Superintendent by several of the employees in the Middle School on Mr. Mansell Twillie, Ms. Florence Perkins, and Ms. Wilma Thornton.
>
> The President of the School Board, Farrington Snipes, read the allegations to the School Board members. After discussing it thoroughly, a motion was made by W. J. Carlson and seconded by W. H. Greene not to renew contracts for the school year 1979-80 to Mansell Twillie, Florence Perkins and Wilma Thornton. Motion carried unanimously.
>
> The Board authorized the Superintendent to send certified letters to the three persons above notifying them of the action taken by the Board.

On that same date letters were sent to the three plaintiffs advising them that their contracts would not be renewed for the school year 1979-80. *See, e.g.*, Pl. Exh. 24.

On June 3, 1979, Mr. Twillie wrote Mr. Snipes, president of the Board, requesting the reasons for the Board's decision not to renew his contract. On June 7, 1979, Mr. Pouncey responded as follows:

> The reasons for the Crawfordsville School Board voting not to re-employ you for the school year 1979-80 are:
>
> 1. Conduct unbecoming a professional administrator of schools.
>
> 2. Failure to demonstrate proper leadership as Principal of School.
>
> 3. Neglect of children-took teacher from room, leaving students unattended.
>
> 4. Failure to follow Title I guidelines-kept Title I aide in office, taking her away from classroom.

On June 9, 1979, Mr. Twillie wrote the Board asking it to "set a public hearing for me." And again on June 10, 1979, Mr. Twillie

wrote "requesting a formal hearing open to the public" and advising that he would be represented by Mr. John Walker. On June 12, 1979, Mr. Pouncey wrote Mr. Twillie advising him that a hearing had been set for Wednesday, June 20, 1979, at 10:00 a.m. The same general sequence was followed with respect to hearing requests by Ms. Perkins and Ms. Thornton. Ms. Perkins' hearing was scheduled at the same time as Mr. Twillie's. However, because Ms. Thornton could not be present on June 20, 1979, her hearing was set for June 25 at 7:00 p.m.[3]

The hearings were held as scheduled. At the conclusion of the June 20, 1979, hearing the parties were advised that there would be another hearing for Ms. Thornton and that the Board would hold off its decision until it had all of the evidence and then decide the three interrelated cases at once.

The transcripts of the hearings, which this Court finds accurately reveal what transpired therein, were introduced as Pl. Exh. 25 and Pl. Exh. 48, respectively. It is important to read both carefully to fully understand the evidence that the Board had before it when it voted at a Special Meeting held on June 28, 1979, not to renew the contracts of Mr. Twillie, Ms. Perkins and Ms. Thornton. Def. Exh. 5.

Before reviewing the evidence it is important to assess the role of the Board and the manner in which it responded to the charges against the three plaintiffs in this case. First the Court finds that neither the Board, as such, nor any member thereof, took any action or initiative to find some reason or excuse for getting rid of Mr. Twillie or the other plaintiffs. All of the plaintiffs were considered by the Board to be in good standing and properly performing their duties until Mr. Pouncey brought their attention to the allegations being made against the plaintiffs by the four employees of the district. Furthermore they did not promote Mr. Twillie to the position of principal of the Middle School in June of 1978 with the hope or expectation that he would fail or that he would violate any rule of

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[3]As it turned out, Ms. Thornton, according to her testimony, was able to, and did in fact, attend the June 20, 1979 hearing.

professional conduct. They promoted him at his request and in good faith and with the hope that he would succeed. (Note: Of course, even if, when they promoted him, they hoped or expected him to violate such fundamental rules of in-school professional conduct as are here involved, it would hardly be a defense if he in fact succumbed to the temptations made possible by his promotion to the position of principal. But the truth is that the individual members of the Board had no ulterior or devious motives in this entire affair.) Which is not to say that, when they were confronted with such allegations, they acted as fairly or deliberately as a Court of Law.

Generally the Board members, being unpaid public servants, shared the philosophy that they should choose a superintendent in whom they had confidence and vest in him or her the authority to deal with day-to-day problems that arise in the operation of a school district. They believed it was their duty to establish policy and operational guidelines, but that, except in unusual circumstances, they should leave the operation of the system to a professional educator and administrator. It is apparent that a large majority of the Board shared the opinion that Mr. Pouncey was an able, effective and professional public school superintendent. Nevertheless when the allegations against the plaintiffs were first mentioned to the Board they immediately recognized the situation as unusual and sensitive. They instructed Mr. Pouncey to further investigate and required that any statements made must be reduced to writing. And, when written statements were submitted, they required that they be signed. The Board members, while not choosing to make their own separate independent investigations of the allegations, made it clear to Mr. Pouncey, in whom they had confidence, that he was to get to the bottom of the matter. They insisted on having the written statements of actual witnesses in addition to Mr. Pouncey's personal report, opinion and recommendation. The evidence clearly shows that in this instance the members of the Board were not going to simply rubber stamp Mr. Pouncey's recommendation. And Mr. Pouncey understood this also.

The Court finds that Mr. Pouncey made a diligent effort to determine the truth. In his investigation he found teachers who intimated that they had information about the issues but "were afraid to come, or won't write" as required by the Board. *See* p. 68 of the June 20 hearing, Pl. Exh. 25. With respect to the allegation by Mrs. Keith that Mr. Twillie had pulled Mrs. Henson down on his lap, Mr. Pouncey questioned Mrs. Henson and she stated that the report was true. *See id.* at 70. Mrs. Henson told Mr. Pouncey "that she was afraid to make a statement, that she was afraid of Mr. Twillie, and that she stayed away from him." *Id.* at p. 74.[4]

The Court finds that *all* members of the Board viewed the charges against Mr. Twillie, Ms. Perkins and Ms. Thornton as most serious. The Court mentions this because at various times during the trial, plaintiffs' counsel suggested a two-pronged defense: (1) the charges were untrue and (2) even if true they were not so serious that, if committed by white personnel, they would have resulted in non-renewal. The suggestion that there were one or more comparable cases involving both white and black personnel which were dealt with differently will be discussed later herein. At this point the Court simply wishes to make clear that each Board member, whether black or white, viewed the allegations against the three plaintiffs as requiring, if true, the non-renewal of plaintiffs' contracts. And the response of each Board member would have been the same if the three

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[4]Mr. Twillie's position with respect to this incident should be noted. When Mr. Pouncey asked him about it Mr. Pouncey recalled that Mr. Twillie acknowledged that he pulled Mrs. Henson down on his lap but stated that "he was just playing around." p. 75, Plaintiff's Exh. 25. In his testimony at the trial he first denied that the incident occurred at all but then suggested it happened in the presence of others, indicating that it occurred but was not a serious matter. Indeed the Board could well have found a certain lack of openness and candor in Mr. Twillie's statement and his testimony. And, after the trial itself, the Court sees additional evidence of Mr. Twillie's willingness to deal loosely with some of the facts. For instance in his E.E.O.C. complaint signed and declared in January of 1980, "under penalty of perjury," paragraphs d, e and f are not, the Court finds, true and accurate factual statements as an examination of the evidence in these consolidated cases will clearly reveal. *See* Pl. Exh. 70.

had been white instead of black. Mr. Hampton, who is black, aptly stated the feeling of each Board member at the June 20, 1979, hearing when he observed:

> If these things—I still say this, and I hope everybody here understands, if these accusations are true—now, you hear me good—I don't think Mr. Twillie or Ms. Perkins or Ms. Thornton's contracts should be renewed.
>
> If they are true. If they are not true, I think they should be renewed, and an apology given.
>
> Now, that is the way I feel.

Although the Board had unanimously voted not to renew plaintiffs' contracts upon the basis of the signed statements, their informal conference with Mr. Twillie, and Mr. Pouncey's report and recommendation, it is not accurate to say that their minds were closed at the times of the formal public hearings on June 20, 1979, and June 25, 1979. It is true that by virtue of the nature of the procedures followed by the Board, and contemplated under Arkansas law, they had become privy to much of the evidence against the plaintiffs. But subjectively the Board members felt themselves to be open minded to any evidence that would undercut or negate the prior submissions.

Neither the Board nor the plaintiffs brought the complaining witnesses forward to testify at the hearing on June 20, 1979. But Mr. Turner, one of the attorneys herein, at the June 25, 1979, hearing did produce and examine Ms. Brenda Frazier, *see* pages 7-12 of Pl. Exh. 48, and Ms. Patsy Griffith, *see* pages 14-17 of Pl. Exh. 48, two of the most important witnesses against the plaintiffs. This additional first-hand testimony could readily have been viewed by the Board as reinforcing and strengthening the written reports submitted by these witnesses. When asked why she kept the written reports on the plaintiffs, Ms. Frazier stated, "I felt like the way she (Ms. Thornton) was carrying on in the office was very unprofessional and I talked to her about it." Mr. Turner then produced the two statements

made by Ms. Frazier (which were later introduced at the trial as Pl. Exh. 18 and Def. Exh. 2). The first (Pl. Exh. 18), which is more or less in the form of a daily log starts with an entry for April 16 and 17 of 1979. Then follow entries for April 18, April 19, "the week of April 23-27," April 26, April 25, and 26, May 2, May 3 and finally May 7, 1979. The other statement was made by Ms. Frazier on May 26, 1979. (Def. Exh. 2).

Mr. Turner asked Ms. Frazier to read her report of April 23 through April 27 which she did as follows:

> The week of April 23-27 he gave her a kiss every morning. Stayed in Mrs. Perkins room. Made a date on Wednesday of the same week. Called Mrs. Thornton in on Tuesday. She comes out blouse open and pants unzipped, bra unhooked.

Then Mr. Turner questioned her in detail about that statement as follows:

> TURNER:
>
> "Okay, now, he gave her a kiss every morning?"
>
> FRASURE [sic]:
>
> "Yes."
>
> TURNER:
>
> "Okay, this part here about her blouse open, pants unzipped, and bra undone. Did you hear any screaming?"
>
> FRASURE:
>
> "No."
>
> TURNER:
>
> "How long did she stay in there?"

FRASURE:

"About ten or fifteen minutes."

TURNER:

"Did she come out running?"

FRASURE:

"No."

TURNER:

"Did she come out upset?"

FRASURE:

"No."

TURNER:

"Well, how did she look?"

FRASURE:

"She just came out, kind of smiling. She asked me to hook her bra back for her."

TURNER:

"You did that that particular week?"

FRASURE:

"Yes."

TURNER:

"Was the office open to the public?"

FRASURE:

"Yes, it was."

TURNER:

"People come in and out all day long?"

FRASURE:

"Yes."

TURNER:

"And you said she was in there ten minutes, and she came out like that, knowing that the office was open to the public?"

FRASURE:

"That's right."

TURNER:

"How often did she do that?"

FRASURE:

"I don't know. It happened several times."

TURNER:

"How many times did you go in the office?"

FRASURE:

"Only when I was asked by the principal."

* * *

TURNER:

"You say she had been doing this quite often. When did it start?"

FRASURE:

"October, I guess."

TURNER:

"It started way back in October, but you just started keeping a record around April 23rd?"

FRASURE:

"Yes."

TURNER:

"And no one suggested you keep a record?"

FRASURE:

"No."

TURNER:

"You did it on your own?"

FRASURE:

"Yes."

While Mr. Turner did a good job in an attempt to impeach Ms. Frazier it is obvious that the Board *could have* viewed her oral testimony at the hearing as reinforcing her written statements.

The same possible effect can be seen from the transcript of Ms. Griffith's oral testimony on June 25, 1979. Mr. Turner referred to her written statement and asked, "When did that occur, one day or two days, or when?" Her response was, "The whole year." Page 15 of Pl. Exh. 48. And he asked her if this "was out in the public so that everybody would know it?" And her answer was, "Students came up and asked about it, yes."

And Mr. Hampton and Mr. Snipes, school board members asked Ms. Griffith if she had any children ("yes") and if she actually saw the things she reported ("yes"). Once again Mr. Turner did an excellent job attempting to impeach Ms. Griffith but again it is clear that an unbiased trier of the fact *could have* come away from the hearing believing more strongly in the truth of the written statements submitted by Ms. Griffith.

Mr. Twillie attended and testified at both the hearing on June 20 and the hearing on June 25, 1979. After generally testifying the latter hearing to his high opinion of Ms. Thornton's professional competence he was asked only one question concerning the allegations as follows:

TURNER:

"You have heard these accusations. Are they true?"

TWILLIE:

"No, they are not true."

At the June 20, 1979, hearing, he testified at greater length. Pl. Exh. 25, pp. 98-114. But the manner in which he testified about certain of the allegations against him *could have* been interpreted by the Board as somewhat evasive and off-hand and as not very direct or straightforward. The following are examples:

Q. It has been suggested that you pulled a lady, Mrs. Henson, I think, down in your lap in your office one day. Do you know anything about that alleged incident?

A. No.

Q. Speak to the Board.

A. Okay.

He mentioned it to me, Mr. Pouncey, and we discussed some—I don't remember what happened, but I don't remember her being in my lap.

Mrs. Henson comes to the office, you know, off and on, having material run off and so forth. As far as her being in my lap, I don't know of an incident like that.

But he did ask me about that, or he did mention it.

Q. And you told him you didn't do that?

A. Yes, I did.

Q. Did he ask you whether or not there were other people present at the time this was supposed to have happened?

A. I think maybe I mentioned that there were two or three other people in their, I believe.

Q. Who are they?

A. I think Mrs. Bullard was in there and possibly Ms. Thornton. That is all I can remember.

Q. Now, with respect to allegations such as kissing Ms. Perkins or Ms. Thornton every morning; did you ever kiss them?

A. I don't have time to do that. I have the business of running the school.

Q. Did you or didn't you?

A. No, I did not.

* * *

Q. It says that, "Mr. Twillie and Ms. Perkins had a disagreement problem in the lounge. He was picking her up, rubbing on her, unhooked her bra, and hooked it back, pulled her blouse out. She unfastened her pants and put her blouse back in place in front of him. He was pulling on her panties and hose. She asked what was wrong with him; he just blowed and said he had to leave because it was getting hot in there."

A. Who said that?

Q. This is what Ms. Frazier said happened on April 26, 1979.

A. I really hate to say exactly what that is, but I have no knowledge of that at all, and I am afraid Ms. Frazier doesn't have any knowledge either.

* * *

Q. I take it that you have looked over Ms. Frazier's statement. Have you, sir?

A. Yes.

Q. Are the statements contained therein true?

A. The statements about me, no.

Q. I have shown you the Patsy Griffith letter of April 14. Have you had occasion to read it?

A. Yes.

Q. She says in there, "I have also seen in the lounge, Mr. Twillie and Ms. Perkins in each others arms, standing. I have seen them feeling each other's bodies and private parts in the lounge. They never cared that I was there or that I might be watching. I have seen him run his hand along her leg, up her skirt and stay there for a while. All this time, she's running her hands on his leg and up it."

Did that happen?

A. No, it did not.

Q. Now, there are a lot of other statements in here. For instance, "Twillie has sat by me on the couch and told me he was taking Ms. Perkins to a motel and spending the weekend with her, and what did I think of it; did I

think that would soothe her feelings of jealousy with Wilma Thorton [sic]? Because he didn't want to give up either one as he had a good thing going with both of them. It disgusted me and I told him I'd heard of people not buying the cow because the milk was free, but I had no thoughts on that problem.

I have seen Perkins and Thorton in a verbal fight and Perkins leaving the campus, mad, in her car, with the students locked up in her room. Twillie got in his van and went after her."

Did that happen?

A. No.

When Mr. Walker asked Mr. Twillie about the May 26, 1979, statement of Ms. Frazier, the questioning and answering went as follows:

Q. Did you observe Ms. Perkins making threats to Ms. Frazier on May 26 in the ladies' bathroom?

A. No, I did not.

Q. Did you try to hold Ms. Perkins off of Ms. Frazier?

A. No.

Q. Did you see any altercation between Frazier and Perkins on that day?

A. Not as a threat, no.

Q. Tell me what happened that day.

A. Well, Mr. Pouncey called and asked for Ms. Perkins to come to the office. It was a Saturday morning, I believe.

Q. Saturday morning?

A. That is May 26, I believe.

Q. No school that day. Go ahead.

A. We passed out report cards.

Q. All right, go ahead.

A. And I really don't know what the outcome of the conversation between Mr. Pouncey and Ms. Perkins was.

I do know that Ms. Frazier left the school building. I had had a lot of problems with her staying out of the office. She wouldn't stay in the office.

I had some reports for her to complete, but she never would complete them. She might start on it.

And evidently, it was a discussion. There were supposed to be other people in the bathroom.

And Ms. Frazier left campus. I asked her to come to the office, and she left campus.

I called the Superintendent's office to ask for her to return to do her reports. And Ms. Croon informed me that she was not here, that she was gone.

I asked for Mr. Pouncey and she informed me that Mr. Pouncey was gone also.

So I told her I would call back later on.

So I guess in about forty or forty-five minutes I called back and talked to Mr. Pouncey. And he told me that there had been a threat.

And, of course, I assured him from my observations that there was no threat. And there were two other people or three other people that talked to Mr. Pouncey on that same day.

Q. Who were they?

A. I believe Ms. Bullock and Ms. Thorton [sic].

And they made it known to him that there was no threat.

And I simply wanted her to come back to work so that she could finish some of the reports that we had.

After Mr. Walker went over the various allegations with Mr. Twillie, the Board President, Mr. Snipes questioned him:

PRESIDENT SNIPES:

In effect, you are denying all these allegations.

MR. TWILLIE:

Sir?

PRESIDENT SNIPES:

In effect, what you are saying is, you deny all these allegations.

MR. TWILLIE:

Oh, they are not true.

PRESIDENT SNIPES:

That we have a written record of.

MR. TWILLIE:

They are not true.

Of course, Mr. Twillie was speaking in person before the Board, the members of which had an opportunity to view first hand his demeanor and manner while responding to the charges. They *could have* concluded that he made a credible witness and that the

charges against him were fabricated falsehoods. The point is that they were called upon to resolve the serious credibility issues presented.

At the June 20, 1979, hearing, Mr. Twillie's attorney called on Ms. VeLivian Bullard to testify. First she was asked to tell what happened during the "bathroom incident" on May 26, 1979. She replied:

> A. To my recollection, Ms. Perkins and I were in the bathroom. Ms. Frazier—well, I think Ms. Perkins and I were using the bathroom. We came out and we were standing somewhere near the wash basin and were washing our hands.
>
> And then Ms. Frazier came in, but I can't tell whether Ms. Frazier was already in there using the restroom or whether she came in later.
>
> And Ms. Perkins started questioning her. And at first. Ms. Frazier didn't say anything. And I asked Ms. Frazier to leave the restroom, and I asked Ms. Perkins to stop questioning Ms. Frazier.
>
> And then suddenly Ms. Frazier started shouting obscenities to Ms. Perkins, saying, yes, that she had come down and that she had told Mr. Pouncey everything.
>
> And Ms. Perkins asked her why did she do it.
>
> And she said, "I did it because I wanted to do it. That is the reason why I did it."
>
> And Ms. Perkins told her that she shouldn't have made up those lies and told on her because she had three children to support and she did not have a husband and she shouldn't have done it.
>
> And Ms. Perkins started screaming and crying.
>
> And then, Mr. [sic.] Frazier, she got upset and started using bad language again.

> And then Ms. Frazier ran out of the bathroom. But nobody was holding her.
>
> Q. Nobody even held her?
>
> A. Nobody held her.
>
> Q. Did anybody hold Ms. Perkins—Ms. Frazier?
>
> A. No. She ran out of the bathroom.
>
> I sent for Ms. Thorton [sic] to come and ask Ms. Frazier to leave the bathroom
>
> Q. Did you ever hear a threat made by Ms. Perkins to Ms. Frazier?
>
> A. No.

She was then questioned about the petitions that were signed by many of the teachers on behalf of the plaintiffs and which were presented to the Board. And she testified that she did not see Mr. Twillie spending an excessive amount of time with any one particular teacher. At the June 25, 1979, hearing Mr. Pouncey was asked if Ms. Bullard or Mr. Fields made any adverse reports to him concerning Ms. Thornton's work and he replied:

> They made statements on one or two occasions that she was in the office most of the time instead of in the classroom.

p. 3, Pl. Exh. 48. And Mr. Pouncey also stated at that hearing that he personally visited the school building [where Mr. Twillie worked] "almost every day" and in most cases Ms. Thornton was in the office. p. 2, Pl. Exh. 48.

Ms. Bullard also testified at the June 25, 1979, hearing. [Note: All parties agree that the witness designated as "Ms. Bullock" was in reality Ms. Bullard. *See* pp. 12-14, Pl. Exh. 48]. She testified that she had never made any complaints to the superintendent about Ms. Thornton's work. p. 13, Pl. Exh. 48.

This, of course, was directly contrary to Mr. Pouncey's testimony. Furthermore some of her testimony was not too supportive of Ms. Thornton:

> TURNER:
>
> Now, according to the schedule, did she perform her duties at these times?
>
> BULLOCK [sic]:
>
> According to the schedule, from 9:15 to 10:20, she would do whatever I wanted her to do according to the duties of Title I Aides, and from 11:15 to 12:10, she was usually in my room. She did perform whatever duties I wanted her to do.
>
> * * *
>
> TURNER:
>
> Does she flirt?
>
> BULLOCK:
>
> No, no more than an average person would do.

Mr. Pouncey had testied at the June 20, 1979, hearing that during his investigation he found that some of the teachers were afraid to give written statements. p. 68, Pl. Exh. 25. Although he stated that Ms. Henson would not give a statement (although she acknowledged the truth of the Keith statement) because she was afraid of Mr. Twillie, Mr. Pouncey would not at the Board hearing on June 20, 1979, divulge the names of other teachers who told him they were afraid to give statements. At the trial, however, he did identify Ms. Bullard as one who stated she would not because she was afraid Mr. Twillie might burn her house down. Ms. Bullard in effect admitted this, but turned the statement around and passed it off as suggesting that the danger would come if she *lied* about plaintiffs. On this issue the Court credits Mr. Pouncey's testimony, finding Ms. Bullard's testimony to generally lack credibility.

Ms. Perkins testified at the June 20, 1979, hearing. pp. 139-143, Pl. Exh. 25. Ms. Thornton testified at the June 25, 1979, hearing. pp. 18-22, Pl. Exh. 48. And, of course, Mr. Twillie testified at both hearings. *See supra.* So each of the plaintiffs not only called witnesses to testify at the hearings, but they themselves also chose to testify and to be heard in connection with the allegtions against them.

Ms. Perkins was shown all of the exhibits containing alleations against her and then asked if any of the information contained therein respecting her conduct was truthful and she replied, "No, they are not." She was then asked to "relate" to some of the specific allegations and she started with the "bathroom incident" as follows:

> A. Okay, on Brenda Frazier's allegation that she had made against me. I had come down to the Superintendent's office, and I knew that some of the things that we had talked about, because I had helped Brenda Frazier a whole lot during the school year. And some of the things that we had talked about, I knew that she was the only somebody who could mention it to Mr. Pouncey.
>
> So, when I went back down to the school, I was in the bathroom with Mrs. Bullard and Ms. Frazier, and I asked her, I said, "Brenda, who would you go up there and tell all those things?"
>
> And she just flew up. She started cursing. And I told her, I said, "Brenda, I don't have a job."
>
> And she acted like it didn't bother her. And I said, "What am I going to do?"
>
> And she said, "Well, I did it because I wanted to."
>
> And I said, "Why, Brenda? I have done all I can to help you."
>
> And I said, "Why would you do this?"

> Well, she just kept saying, "I just wanted to."
>
> You know, I wondered what had I done to make her do this. And she could never give me an answer.
>
> But she has come to me, and I have taken work home to type up for her so she wouldn't get in any trouble in the office.

Once again, the Board members *could have* asked themselves, "is this the way an innocent person responds to serious outright lies?" There is the implication that Ms. Perkins had confided in Ms. Frazier and "that she was the only somebody who could mention it to Mr. Pouncey." Ms. Perkins' objection is not stated in terms of "why did you tell those horrible lies about me" but, rather that your telling "all those things" to Mr. Pouncey "is costing me a job." Then she was asked if she was "having an affair with Mr. Twillie" and her response was: "No, I don't go with married men, period." When asked if she left her children unattended in class from time to time, her answer *could have* been interpreted as not very satisfactory:

> No. Each time I went out of my classroom, Ms. Fields is right across the hall, and she would always know when I left and she would take care of my children.

Of course the Board heard her and saw her while she was testifying. They *could,* on the other hand, *have* found her answers satisfactory.

The effect of Ms. Thornton's testimony is similar. She first acknowledged that Mr. Pouncey had called her into the office "and told me I could not stay in the office as secretary because I was paid under Title I and had to work strictly under Title I." Her entire testimony concerning the charge of "conduct unbecoming a teacher" is as follows:

> THORNTON:
>
> When I received the letter. No, I talked to Mr. Pouncey and he had heard rumors. I ignored it until I heard

another rumor, and then I went to Mr. Pouncey to talk. We talked a lot about general things. He talked to me about the community, and I asked if anyone in the community had said anything about my conduct. He told me no, and asked me how the rumors got started. I told him it had to come from Ms. Frasure or someone like that."

TURNER:

Were you and Ms. Frasure friends?

THORNTON:

I have helped her quite a bit. I have loaned her money without being paid back. I have given her rides, and I did not charge her for any gas. I just really treated her like a sister.

TURNER:

Why would she accuse you of these things?

THORNTON:

I really don't know. One time I even called her house and talked to her mother. Her mother thought she was with me, but she wasn't. She asked me why I called her house. Also, she would go to the cafeteria and get food and say that I had sent her, but I had not. She said that she did it for me when her husband found names of hotels and motels in her purse. I can tell you something else. Mr. Pouncey wanted a report, and Ms. Frasure called me to do it. I said, "You are the secretary, you are supposed to do it." Then she hit me. I did not appreciate her telling me that I had to hurry up and get it done. I did the report, even though it was Ms. Frasure's job. This happened in September or early October.

TURNER:

When did her attitude change toward you?

THORNTON:

I think it was April, after Mr. Twillie made his recommendations.

TURNER:

This is when the note taking began, right?

THORNTON:

I suppose.

TURNER:

Tell the truth—was there any truth in any of these rumors?

THORNTON:

No. Now there was twice I left the office distressed. The first time was because of a mouse. The second time, I went to Mr. Twillie to take dictation and lightening hit and I ran out.

TURNER:

These statements by Ms. Griffith and Ms. Frasure are not correct?

THORNTON:

No. I don't know where Ms. Griffith got her story. I have never had an abortion.

TURNER:

Are you married?

THORNTON:

Yes. This is Charles, my husband.

TURNER:

How long have you been married?

THORNTON:

Three years. The statement saying she walked pass the office at 2:00 and Mr. Twillie was feeling and looking—Mr. Twillie was not even there then. Also, after I received the letter, I also received a phone call telling me what was told and telling me not to pursue it.

TURNER:
Were you threatened?

THORNTON:

No, just told. I had to show Ms. Griffith how to type. I was in the office to train her. I would do the work, because she could not do it. When she was absent, I did her work. I have done their work and my work. I have done the work of three people, and I have enjoyed it.

TURNER:

Ms. Griffith has said she saw you and Ms. Perkins in a verbal fight.

THORNTON:

Not in school, she has not. Only at a ball game, you might have heard us disagree.

SNIPES:

Do you know of any reason why these ladies might want to get you fired?

THORNTON:

No, unless it was because of Mr. Twillie's recommendations.

The plaintiffs, both at the hearings before the Board and at the trial, pointed to various motives of those who made the charges against them. Ms. Frazier, for example, received an adverse recommendation from Mr. Twillie concerning her competence as a secretary sometime in April, 1979, about the time she started keeping the written "log." *See* Def. Exh. 34. But the principal issue before the Board was *truth or falsehood of the charges.* Of course the motives of those making accusations are important and could affect the determination of where the truth lay. But even an unworthy motive to report that which in truth was going on would not affect the outcome. Only if the Board believed that those making the accusations were lying would the result logically be affected. Here the members of the Board could see the motives of all concerned but they ended up believing the truth of the allegations.

A piece of evidence introduced at the trial in 1983—which does not appear to have been before the Board at the hearings in 1979—has a very damaging effect on plaintiffs' case with respect to the credibility of their fundamental position, i.e., that the relationships between Mr. Twillie and Ms. Perkins and between Mr. Twillie and Ms. Thornton were purely professional, i.e., the typical relationship between a principal of a school and teachers serving under his direction. The defendants produced Def. Exh. 12 during their cross examination of Ms. Thornton, which Ms. Thornton identified as the beginning of a letter she was writing to Mr. Twillie on May 18, 1979. Her testimony concerning same follows:

Q. Ms. Thornton, I'm going to hand you a document, that I'm not going to yet mark but will mark if you can identify it, and ask you if it's a piece of note paper with handwriting on it. Can you identify that as your handwriting?

A. That's my handwriting.

Q. And what is the date at the top of that?

A. May 18, 1979.

THE COURT:

May 18 what?

MR. LIGHT:

1979, the witness said, Your Honor.

THE COURT:

The exhibit number?

MR. LIGHT:

Defendants' 12, Your Honor.

Q. Would it be consistent with your recollection of that document you just identified that it was found left on your desk about the time you left the Crawfordsville School District?

A. Not on my dessk. This was in the garbage can.

THE COURT:

It was what?

THE WITNESS:

It was in the garbage.

Q. You had discarded it into the garbage can?

A. Yes, and I started another sheet of paper.

Q. Would you just pick it up and read it to the Court.

A. It says: "Mr. Twillie, I really don't feel honorable doing this since I promised—well, maybe not promised Mr. Huffman but I did say I would not disclose any information told to him in confidence, and I want to feel that you will give me the same respect.

"First of all, Mr. Huffman is not a fan of either you or Ms. Perkins. I'm not saying this has any bearing on some attempt to dismiss either of you; just that he spoke what he felt to be true. He felt that he couldn't help from noticing certain things that goes on."

Q. Is that the entire thing?

A. That's as far as I wrote on that sheet.

Q. With the exception of the date at the top you read the entire message.

A. Yes, I did.

Q. And the date on the top is written up there; is that correct?

A. Yes.

Q. And you wrote that date on there.

A. Yes.

MR. LIGHT:

I offer Defendant's Exhibit 12, Your Honor.

THE COURT:

It is received.

(Defendants' Exhibit No. 12 was received in evidence.)

Q. Now who was Mr. Huffman?

A. I believe he was the math teacher.

Q. At the high school?

A. Middle school.

Q. At the middle school.

A. Yes, he is.

Q. Let me ask you—

THE COURT:

Is Mr. Huffman white or black?

THE WITNESS:

White.

Q. Can you explain the context in which you wrote that Defendants' Exhibit 12?

A. Yes, I can.

Q. Please do so.

A. This was after the time that Mr. Huffman had told me that Mr. Pouncey was asking him for some information concerning Mr. Twillie, and I believe Mr. Huffman also told me—well, he mentioned that he had noticed that Ms. Frazier was keeping—also keeping a record or something; was keeping a record or something. This is what I was going to disclose on the end of that letter. I don't know if I had finished the letter or not, but I didn't finish it on that particular page. This is all Mr. Huffman had told me.

Q. Ms. Thornton, these allegations that were made against you and that were reviewed in that hearing on June 25, 1979 before the school board were some pretty damaging and deleterious allegations if they were true, weren't they, or if they were untrue.

A. Yes, they were.

Q. I messed up my question. Let me ask it again so I make sure that it comes through.

A. Okay.

Q. If those allegations made by those people to the school board were not true, they certainly are damaging, obviously.

A. Yes, they are.

Q. Now did you know then that you could file suit against people that make false accusations of that damaging nature against you?

A. Yes, I did.

Q. And did you bring any such suit?

A. No.

While the letter, Def. Exh. 12, does not admit the truth of specific charges against the parties, its tone and language, by inference, lend support to the allegations of some improper non-professional relationship and also support the charges of a jealous relationship between Ms. Thornton and Ms. Perkins with regard to Mr. Twillie. Neither the testimony of Ms. Thornton nor that of Mr. Twillie have provided any explanation of that document which would undercut the inferences logically flowing therefrom. This piece of evidence also tends to support the inference that both Ms. Thornton and Mr. Twillie were aware of the gathering storm before Mr. Twillie's meeting with Mr. Pouncey on May 21, 1979.

Plaintiffs suggest that, under identical facts and circumstances, if they had been white, their contracts would have been renewed. They cite, strangely enough, an incident affecting Mr. F. A. Tyler, another black principal, and also an incident concerning two white female teachers several years before.

The incident allegedly affecting Mr. Tyler is referred to in Ms. Frazier's log-type record, Pl. Exh. 18, under the entry for May 2, 1979. This serious allegation against Mr. Tyler was denied by him. Apparently no other witness supported Ms. Frazier's charge and the Board just let it go by although the Court gets the definite impression that Mr. Pouncey and at least one member of the Board tended to believe Ms. Frazier at the time and were not for passing over that incident either. *See* testimony of Mr. Robertson. The record is not clear why this charge was not pursued. It may be that a majority of the Board believed Mr. Tyler's denial, or did not believe Ms. Frazier's charge in the first place, or felt that they could not go forward upon the uncorroborated statement of one witness against a school official regarding only one specific incident. If Mr. Tyler had been white Mr. Twillie would cite this case as strongly supporting his argument of racial discrimination. But even in that circumstance he would have been equally wrong, despite appearances, because the Court is convinced that the Board's failure to act in Mr. Tyler's case was a judgment call not based in any way upon racial considerations. The Board obviously viewed Mr. Twillie's case as involving multiple incidents with two different teachers (who were under his administrative supervision) over a period of many months and which, if the witnesses were believed, were carried on more or less openly and blatantly, which, if true, would affect the morale and discipline of the whole school. Whether right or wrong they obviously considered the case against Mr. Twillie to be much stronger and more serious.

The other case referred to by plaintiffs is in no way comparable to their case. Sometime in 1977 two white female teachers, Ms. Sandra Akins and Ms. Barbara Bridgewater were accused of misconduct. The basic accusation was that they showed favoritism toward certain white students in their grading practice. *See* Harry Williams' testimony. Although there were rumors, there were no actual allegations involving moral or sexual improprieties. In addition to allegations of racial favoritism one of the teachers was accused of being absent frequently. Mr. Tyler took the matter directly to the Board

without first taking it up with Mr. Pouncey. The Board apparently decided to terminate the teachers and this decision provoked considerable protest. Mr. Pouncey investigated by talking to Mr. Tyler, the teachers and parents of the students who were the alleged beneficiaries of the racial favoritism. He concluded that action had been precipitate, and he was worried about a possible lawsuit. He recommended setting the action aside for failure to follow proper procedures and the Board followed his recommendation. The Court credits Mr. Pouncey's testimony about the incident but also notes that none of the testimony concerning it would in any event warrant the conclusion that it was in any way comparable to the incidents that led to the non-renewal of plaintiffs' contracts.

Once again the Court finds and concludes that the procedures followed and the actions taken by the Board in connection with the non-renewal of plaintiffs' contracts would not have been different had plaintiffs been white.

In these four consolidated cases, plaintiffs' attorney spent considerable time showing, or attempting to show such things as, that the school district in the 1960s, and earlier, operated a segregated educational system in violation of the Constitution (true); that the economy of the area was a "plantation economy" (the problem: no definition of terms yet certainly the economy has dramatically changed from the labor-intensive, non-mechanized system of agriculture prevailing before World War II); and that the defendants, or whites generally, were in some way preventing blacks from registering to vote or from voting (absolutely no showing; indeed the evidence reflects that blacks have been elected to membership on the school board frequently over the past decade and, at one time, constituted a majority on the Board). None of this evidence, as it turned out, had any relevance to the issue of the decision to not renew these three plaintiffs' contracts in 1979. Nor did race, or the participation in other lawsuits, or the espousal of any view or attitude, have anything to do with that decision. The members of the Board voting not to renew plaintiffs' contracts did so for one reason: they honestly and in good faith believed the allega-

tions were true.[5] Their decision was based upon substantial evidence. It was neither arbitrary nor capricious.

The plaintiffs had the burden in this case to establish intentional discrimination based upon race on the part of one or more of the defendants. None of the plaintiffs has sustained that burden. Even if the burden had been on the defendants to establish that they acted in a non-discriminatory manner, basing their decision on legitimate non-discriminatory criteria, said defendants have, the Court concludes, sustained that burden.

The hearings provided in 1979 for these three plaintiffs were in substantial compliance with Act 74 of 1970 which was in effect at the time of said hearings. Neither that statute, nor the Constitution, requires in this context that an opportunity be provided to cross examine witnesses. *Burden v. Hayden,* 275 Ark. 93, 627 S.W.2d, 555 (1982). Nevertheless plaintiffs' counsel did call and "cross examine" Mr. Pouncey, Ms. Frazier, Ms. Griffith and others at the hearings.

These plaintiffs' contracts were not terminated during the school year. Defendants let plaintiffs finish the 1978-79 school year but simply did not renew their contracts for 1979-80. The plaintiffs here are non-tenured. They each requested a public, rather than a private, hearing. Neither the Arkansas statute, nor the U.S. Constitution, requires that they be afforded a hearing before the initial non-renewal decision is made. In fact the Arkansas statute by its terms assumes the adequacy of a post-initial determination hearing. *Williams v. Day,* 412 F. Supp. 336 (E.D. Ark. 1976), *aff'd,* 553 F.2d 1160 (8th Cir. 1977). Furthermore, plaintiffs were not, under the facts and circumstances found, entitled to the application of federal due-process constitutional standards to the non-renewal of their contracts.

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[5]The Court credits the following statement of the defendant W.D. Robertson and finds it to represent the sincere view of each of the Board members who voted not to renew plaintiffs' contracts:

> "I would not make a man lose a job if I did not believe he did wrong."

It is not the function of this Court to decide whether the Board's decision was right or wrong. If the decision was not based upon a constitutionally impermissible ground and if the decision was not arbitrary and capricious, it must be sustained. *See, Cato v. Collins,* 394 F. Supp. 629 (E.D. Ark. 1975), *aff'd* 539 F.2d 656 (8th Cir. 1976); *Sheelhaase v. Woodbury Central Community School District,* 488 F.2d 237 (8th Cir. 1973).

The defendants in good faith, having substantially complied with the law and their own policies, as properly interpreted in relation to the facts in this case, and having based their decisions not to renew plaintiffs' contracts on substantial evidence, plaintiffs' Complaint herein, as amended, must be dismissed.

A development occurred near the end of the trial which cannot be ignored by the Court. Ms. Brenda Frazier (Mrs. Brenda Frazier Johnson at the time she testified) was called as a rebuttal witness by plaintiffs' attorney. It will be recalled that Ms. Frazier was one of the principal sources of evidence against the plaintiffs, having provided a log-type statement (Pl. Exh. 18) and another statement dated May 26, 1979 (Def. Exh. 2) in which Ms. Frazier stated that Mrs. Perkins had threatened her in the "bathroom incident" immediately after Mrs. Perkins' conference with Mr. Pouncey concerning the charges made against her.

Ms. Frazier's testimony was not in any way rebuttal but was apparently intended as a recantation of the evidence that she had previously given to Mr. Pouncey and the Board. The Court nevertheless permitted Mr. Walker to bring forward the testimony concluding that it could have an important effect on the case. As it turned out, however, her testimony, although it did not in any way alter the outcome, had a negative effect on the plaintiffs' case and, conversely, strengthened the positions taken by the defendants.

Ms. Frazier on May 20, 1983, testified that in April 1979 Mr. Pouncey came into the library and asked her if she had

observed anything about Mr. Twillie and that she had answered "No." Then she recalled that after the incident which she experienced with Mr. Tyler (*see* May 2, 1979, entry on Pl. Exh. 18) she went to Mr. Pouncey and told him what happened. She then indicated that Mr. Pouncey responded by asking her about Mr. Twillie. He wanted to know if Ms. Frazier had observed Mr. Twillie engaged with Ms. Perkins or Ms. Thornton. Her reply again was "No." She recalls no other conversation with Mr. Pouncey but she testified that she did recall signing a blank sheet of paper at Mr. Pouncey's request. When Pl. Exh. 18 was handed to her she denied that she typed it intending, apparently, to leave the impression that Mr. Pouncey had concocted the information contained therein and had utilized her signature on the blank sheet of paper to give it authenticity. However, she quickly had to depart from that theory because she acknowledged after much questioning that she had actually handwritten out everything on Pl. Exh. 18 starting with the last paragraph on page 1 that begins with "On May 2, 1979" and including everything on the last page except the last three lines under the entry "5-7-79." In other words she admitted writing about the Tyler incident but not matters derogatory of Mr. Twillie. (Note: it will be recalled that Mr. Twillie testified that when he returned from his conference with Mr. Pouncey on May 21, 1979, he called in each of the teachers and that, among other things, Ms. Frazier admitted that she had made a statement to Mr. Pouncey about Mr. Tyler but denied making any statement about Mr. Twillie.) Mr. Walker then read the following paragraphs from Pl. Exh. 18:

> April 26, 1979. Mr. Twillie and Mrs. Perkins had a disagreement problem in the lounge. He was picking her up, rubbing on her, unhooked her bra, and hooked it back, pulled her blouse out, she unfastened her pants and put her blourse [sic] back in place in front of him. He was pulling on her panties and hose. She asked what was wrong with him, he just blowed and said he had to leave because it was getting hot in there.

He then asked her if she made that statement to Mr. Pouncey and her reply was "No." She stated that she did not observe

such conduct or tell Mr. Pouncey about it or write it out. And she took a similar position with respect to the entry referring to the week of April 23-27.

As indicated Ms. Frazier testified on Friday, May 20, 1983. On cross examination she stated that she had driven down to Little Rock on Wednesday evening, May 19, at the request of plaintiffs' attorney and had been given a subpoena by him on May 19. She testified that she first talked with Mr. John Walker during the first session of the lawsuit back in January, 1983, which she described as a "friendly conversation," and then stated she had had no further conversation with him prior to May 19, the day before her appearance in court.

Ms. Frazier acknowledged that she had attended, and testified at, the hearing for Ms. Thornton on June 25, 1979 (*see* Pl. Exh. 48); that she went to that hearing on her own and that Mr. Turner asked her to testify. She admits that she did not tell the School Board at the hearing that anything in her typewritten statement was wrong or inaccurate.

At this point defendant's attorney handed Ms. Frazier Def. Exh. 34. It is important to compare Def. Exh. 34 and Pl. Exh. 18 side by side. Ms. Frazier acknowledged that Def. Exh. 34 was in her handwriting and signed by her but she stated that she did not give that handwritten statement to Mr. Pouncey, saying that her copy thereof must have been stolen. Pl. Exh. 18 is an exact typewritten copy of Def. Exh. 34. Ms. Frazier then testified that she did not deny writing Defendant's Exhibit 34 but denied that she turned it in to Mr. Pouncey.

The Court credits the testimony of Mr. Pouncey that Ms. Frazier gave him Def. Exh. 34 when she visited his office one afternoon. She had made oral statements before and he told her that he could not accept such allegations unless they were written down. He then told her to type up and sign the statement and bring it back. In two or three days she brought back both the handwritten and the typed versions.

Mr. Pouncey retired in 1981. When he was getting ready for this trial he reviewed his file, removed Exhibit 34 and gave it to defendants' attorney.

The Court further credits Mr. Pouncey's testimony that Ms. Frazier never handed him a blank but signed piece of paper and that he never "stole" any handwritten notes from her.

After the above episode the Court asked Ms. Frazier if what she said in Pl. Exh. 18 was true. She answered, "I can't say that it is." She again admitted writing Def. Exh. 34 but stated that she and her husband revised it and that she decided not to turn it in "because it wasn't my business."

When Ms. Frazier was asked why she would write things that were not true she stated that she "wrote what I felt was happening" and that she "didn't really see" but "felt it was going on."

Next Ms. Frazier testified that she did not know that the bad part in Pl. Exh. 18 about Mr. Twillie was being used against Mr. Twillie. Her attention was then drawn to Pl. Exh. 48, the transcript of the June 25 hearing in which she, Ms. Frazier, testified, which reflects that specific portions of Pl. Exh. 18 *referring to Mr. Twillie* were quoted to Ms. Frazier by Mr. Turner after which she was questioned about the specifics of such statements. *See* pages 9 and 10 of Pl. Exh. 48.

Ms. Frazier's testimony on May 20, 1983, is, indeed, worse than just incredible. The total effect was to leave the strong inference that her written statements and oral testimony back in 1979 were true or at least believed by her to be true. Of course whether her original statements were true or false is not critical here since this Coiurt is not called upon to determine the truth or falsity of complaints made in 1979 against the plaintiffs. The question rather is whether the Board's decision was made in good faith and not arbitrarily or capriciously.

After hearing the testimony of Ms. Frazier, the Court briefly considered whether, under the stated circumstances, some of

her more blatant falsehoods should not be dealt with severely. However, Ms. Frazier is not the only person who did not tell the truth, "the whole truth," during this trial, and the Court's feeling, after observing her testify, is that she was fearful and under considerable pressure. And there was some evidence that she may have suffered a nervous breakdown in the past.

— After hearing all of the evidence it is quite clear that many of the employees, patrons and citizens of the Crawfordsville School District have, somewhat indifferently to the true merits, "chosen up sides" with respect to the issues in these four consolidated cases. So the Court chooses to pass up this sorry incident as representative of the excesses that sometimes follow from zealous but blind partisanship.

After Ms. Frazier's testimony had been thoroughly discredited upon cross examination, Mr. Pouncey was put back on the stand for the last time to explain about the Def. Exh. 34 and Pl. Exh. 18. *See* supra. And, since plaintiff's attorney had attempted in some way to explain Ms. Frazier's testimony by pointing out that on page 8 of Pl. Exh. 48, Transcript of June 29, Mr. Turner had referred to *two* reports, Mr. Pouncey testified that the two different statements referred to were Pl. Exh. 18 and Def. Exh. 2. The cross examination of Mr. Pouncey concerning these "two statements" illustrates in many ways the limitations of "leading question" cross examination as a vehicle for establishing the truth, a proposition that is well known to, and understood by, trial judges. It should be noted that the plaintiffs started off their case by questioning Mr. Pouncey in such a manner for 2½ days. In similar fashion they concluded the case by questioning him about the "two statements." Depending upon the age, intelligence, health and temperament of the witness and the techniques used and pressure applied by a skilled attorney, some witnesses are practically reduced to vegetables during this process and will reach the point where they will practically agree with anything counsel suggests. Of course, this will be apparent to the judge or jury actually observing this process, so the effect, at the trial level, will appropriately be discounted. The trier of fact is, of course,

seeking the truth. The circumstances that an attorney may get a witness to agree that black is white does not of course, affect the truth of the matter.

The Court makes this comment because it is absolutely clear, indeed beyond any question, that the statements referred to in Pl. Exh. 48 are in truth and in fact the same as Pl. Exh. 18 and Def. Exh. 2. And the Court so finds. And yet, plaintiffs' counsel was able to confuse Mr. Pouncey about these statements time and time again. Not only is it clear as to which statements were being referred to in Pl. Exh. 48 but it is equally clear if one refers to Pl. Exh. 25 (Transcript of the June 20 hearing) in which Mr. Walker himself acted as counsel. *See* pages 12-13. Mr. Walker recognized the two documents when he stated "So Brenda Frazier, on May 26th and on April 16th, two separate documents?" And a similar reference will be found on page 32 of that transcript.

As will be evident from the findings made herein the Court did not believe and credit everything as to which Mr. Pouncey testified. Nor did it disbelieve everything the plaintiffs testified to. Both sides were, on occasion, too partisan and extreme in their statements. There was, at times, a considerable lack of candor all around. But, although the defendants may not share the self-proclaimed enlightened views that some might hope they would, still they clearly are not the evil conspirators or ogres which plaintiffs would have the Court believe. Like most, they are basically decent, if imperfect, people who tried very diligently in this case to do the right thing on behalf of the children and the patrons of the district. Whether right or wrong, their decisions must, under the facts found, be upheld as having been made within their authority and discretion under the laws of the State of Arkansas.

Dated this 5th day of October, 1983.

/s/ Garnett Thomas Eisele
United States District Judge

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION
(Filed 10-05-83)

Mansell Twillie, et al

V.

G. B. Pouncey, Superintendent, et al

J-C-80-175
With Consolidated
Cases J-C-74-60,
J-C-77-126 and
J-C-78-105

JUDGMENT

Pursuant to the Memorandum Opinion filed in this case this date, it is Considered, Ordered and Adjudged that the case be, and it is hereby, dismissed.

Dated this 5th day of October, 1983.

/s/ Garnett Thomas Eisele
United States District Judge

UNITED STATES COURT OF APPEALS
For the Eighth Circuit
September Term, 1984

JUDGMENT
(Filed Jan. 21, 1985)

No. 83-2517 *
*
Jessee Ivra, et al, *
*
Appellants, *
*
V. *
*

C. B. Britton, etc., et al,	*	
	*	
Appellees.	*	
	*	
Nos. 83-2518, 83-2644, 83-2660	*	
	*	
Less Doll Twillie, et al,	*	Appeal from the United
	*	States District Court
Appellants-cross-appellees,	*	for the Eastern District
	*	of Arkansas
V.	*	
	*	
Crawfordsville Arkansas School	*	
District No. 2, et al,	*	
	*	
Appellees-cross-appellants.	*	

This appeal from the United States District Court was submitted on the record of the said District Court, briefs of the parties, and was argued by counsel.

After consideration, it is ordered and adjudged that the judgment of the said District Court in each of these cases is affirmed, subject to the limited order of remand as directed in accordance with the opinion of this court.

January 21, 1985

A true copy:

ATTEST: /s/ Robert D. St. Vrain

CLERK, U.S. COURT OF APPEALS, 8TH CIRCUIT
2-14-85

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
(Filed Feb. 21, 1985)

No. 83-2517

Jessee Ivra, Velma Smith, Barbara Jones, Lawrence Woods, Less Doll Twille, Dorothy Woods, Anna Brown, Hazel A. Drinkwater, Earnestine Taylor, Ora Harris, Mansell Twillie, and Leurlene Price — Appellants

V.

C.B. Britton, President of the Crawfordsville School Board, W.J. Carlson, Robert English, Randall Johnson, and Henry Valentine, Board Members, and G.B. Pouncey, — Appellees

* * * * *

Floyd Munn, — Appellant

V.

C.B. Britton, President of the Crawfordsville School Board, W.J. Carlson, Robert English, Randall Johnson, and Henry Valentine, Board Member and G. B. Pouncey — Appellees

Mansell Twillie, Wilma J. Thornton, and Florence Perkins — Appellants

V.

G.B. Pouncey, Superintendent, Edward Hampton, President of the Crawfordsville School Board, Bill Robinson, David Wallace, W. H. Green, and James Jackson Jr., Board Members — Appellees

NOTICE OF APPEAL

Notice is hereby given that Masell Twillie, and Florence Perkins, Appellants above named, hereby appeals to the Supreme Court of the United States from the Final Judgment entered in this action on the 21st day of January 1985.

This Appeal is taken pursuant to Title 28, U.S.C., Section 1254 (1).

/s/ Mansell Twillie
MANSELL TWILLIE, APPELLANT

/s/ Florence Perkins
FLORENCE PERKINS, APPELLANT

/s/ Samuel Turner Jr.
SAMUEL TURNER JR.
Attorney for Petitioners
P. O. Box 1043
West Memphis, AR 72301
(501) 735-0707

CERTIFICATE OF SERVICE

I, Samuel Turner Jr., Attorney for Mansell Twillie and Florence Perkins, Petitioners, state that I have served a copy of the foregoing Appendix on the Attorneys of record, by depositing a copy thereof, postage prepaid in the United States Mail, addressed to counsels of record at their address as follows: Mr. John W. Walker, 1723 Broadway, Little Rock, AR 72201; Mr. Robert V. Light, Friday, Eldredge & Clark, 2000 First National Bldg., Little Rock, AR 72201; and Ms. Benita Terry Jones, 11450 Audelia, #398, Dallas, Texas 75243.

This 17th day of April, 1985.

/s/ Samuel Turner Jr.